



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PROCEDURE PRIOR TO TRIAL

CONVICTION AND SENTENCE

Adjournment and remand

179 Power of court to adjourn a case before sentence.

- (1) It is hereby declared that the power of a court to adjourn the hearing of a case includes power, after a person has been convicted or the court has found that he committed the offence and before he has been sentenced or otherwise dealt with, to adjourn the case for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with his case: [^{F1}and where the court so adjourns the case it shall remand the accused in custody or on bail][^{F2}or ordain him to appear at the adjourned diet]:

Provided that a court shall not for the purpose aforesaid adjourn the hearing of a case for any single period exceeding three weeks.

- [^{F3}(2) An accused who is remanded under this section may appeal against the refusal of bail or against the conditions imposed within 24 hours of his remand, by note-of-appeal presented to the High Court, either in court or in chambers, may, after hearing parties—
- [review the order appealed against and either grant bail on such conditions as
 - ^{F4}(a) it thinks fit or ordain the accused to appear at the adjourned diet;]
 - (b) confirm the order.]

Textual Amendments

- F1** Words inserted by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), [s. 5\(a\)](#)
- F2** Words inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 6 para. 1](#), [Sch. 7 para. 36\(a\)](#)
- F3** [S. 179\(2\)](#) added by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), [s. 5\(b\)](#)

Status: Point in time view as at 01/02/1991.

Changes to legislation: Criminal Procedure (Scotland) Act 1975 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

F4 S. 179(2)(a) substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, Sch. 7 para. 36(b)

179A Offence committed by person under supervision etc.: provision of local authority report.

Where a person specified in section 27(1)(b)(i) to (vi) of the Social Work (Scotland) Act 1968 commits an offence, the court shall not dispose of the case without obtaining from the local authority in whose area the person resides a report as to—

- (a) the circumstances of the offence; and
- (b) the character of the offender, including his behaviour while under the supervision, or as the case may be subject to the order, so specified in relation to him.

180 Remand for inquiry into physical or mental condition.

(1) Without prejudice to any powers exercisable by a court under the last foregoing section, where a person is charged before a court with an offence punishable with imprisonment, and the court is satisfied that he did the act or made the omission charged but is of opinion that an inquiry ought to be made into his physical or mental condition before the method of dealing with him is determined, the court shall remand him in custody or on bail for such period or periods, no single period exceeding three weeks, as the court thinks necessary to enable a medical examination and report to be made.

(2) Where a person is remanded on bail under this section, . . . ^{F6} it shall be a condition of the [^{F7}order granting bail] that he shall—

- (a) undergo a medical examination by a duly qualified medical practitioner or, where the inquiry is into his mental condition and the [^{F7}order granting bail] so specifies, two such practitioners; and
- (b) for the purpose attend at an institution or place, or on any such practitioner specified in the [^{F7}order granting bail] and, where the inquiry is into his mental condition, comply with any directions which may be given to him for the said purpose by any person so specified or by a person of any class so specified;

and, if arrangements have been made for his reception, it may be a condition of the [^{F7}order granting bail] that the person shall, for the purpose of the examination, reside in an institution or place specified as aforesaid, not being an institution or place to which he could have been remanded in custody, until the expiry of such period as may be so specified or until he is discharged therefrom, whichever first occurs.

(3) ^{F8}

(4) On exercising the powers conferred by this section the court shall—

- (a) where the person is remanded in custody, send to the institution or place in which he is detained, and
- (b) where the person is released on bail, send to the institution or place at which or the person by whom he is to be examined,

a statement of the reasons for which the court is of opinion that an inquiry ought to be made into his physical or mental condition, and of any information before the court about his physical or mental condition.

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- [^{F9}(5) A person remanded under this section may appeal against the refusal of bail or against the conditions imposed within 24 hours of his remand, by note of appeal presented to the High Court, and the High Court, either in court or in chambers, may after hearing parties—
- (a) review the order and grant bail on such conditions as it thinks fit; or
 - (b) confirm the order.]

Textual Amendments

- F6 Words repealed by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), [Sch. 2](#)
- F7 Words substituted by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), [Sch. 1 para. 5](#)
- F8 [S. 180\(3\)](#) repealed by [Bail etc. \(Scotland\) Act 1980 \(c. 4\)](#), [Sch. 2](#)
- F9 [S. 180\(5\)](#) added by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), [s. 6\(b\)](#)

Admonition and discharge

181 Admonition.

A court may, if it appears to meet the justice of the case, dismiss with an admonition any person found guilty by the court of any offence.

182 Absolute discharge.

Where a person is convicted of an offence (other than an offence the sentence for which is fixed by law) the court, if it is of opinion, having regard to the circumstances, including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate may, instead of sentencing him, make an order discharging him absolutely.

Modifications etc. (not altering text)

- C1 [S. 182](#) amended by [Licensed Premises \(Exclusion of Certain Persons\) Act 1980 \(c. 32, SIF 68A:1, 2\)](#), [s. 1\(2\)\(c\)](#)

Caution

182A Caution.

Where a person is convicted of an offence (other than an offence the sentence for which is fixed by law) the court may, instead of or in addition to imposing a fine or a period of imprisonment, ordain the accused to find caution for good behaviour for a period not exceeding 12 months and to such amount as the court considers appropriate.

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Probation

183 Probation.

(1) [^{F12}Subject to subsection (1A) below,] where a person is convicted of an offence (other than an offence the sentence for which is fixed by law), the court, if it is of opinion having regard to the circumstances, including the nature of the offence and the character of the offender [^{F13}and having obtained a report as to the circumstances and character of the offender], that it is expedient to do so, may instead of sentencing him make a probation order, that is to say an order requiring the offender to be under supervision for a period to be specified in the order of not less than [^{F14}six months] nor more than three years.

[^{F15}(1A) A court shall not make a probation order under subsection (1) above unless it is satisfied that suitable arrangements for the supervision of the offender can be made by the local authority in whose area he resides or is to reside.]

(2) A probation order shall be as nearly as may be in the form prescribed by Act of Adjournal, and shall name the local authority area in which the offender resides or is to reside and the order shall make provision for the offender to be under the supervision of an officer of the local authority of that area, or, where the offender resides or is to reside in a local authority area in which the court has no jurisdiction the court shall name the appropriate court (being such a court as could have been named in any amendment of the order in accordance with the provisions of Schedule 5 to this Act) in the area of residence or intended residence, and the court last mentioned shall require the local authority for that area to arrange for the offender to be under the supervision of an officer of that authority.

(3) Subject to the provisions of Schedule 5 to this Act relating to probationers who change their residence, an offender in respect of whom a probation order is made shall be required to be under the supervision of an officer of the local authority as aforesaid.

(4) Subject to the provisions of the next following section, a probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements as the court, having regard to the circumstances of the case, considers

[^{F16}(a)] [^{F17}necessary for][^{F17}conducive to] securing the good conduct of the offender or [^{F18}for][^{F18}to] preventing a repetition by him of the offence or the commission of other offences; [^{F19}or

(b) where the probation order is to include such a requirement as is mentioned in subsection (5A) [^{F20}or (5B)] below, conducive to securing or preventing the aforesaid matters.]

(5) Without prejudice to the generality of the last foregoing subsection, a probation order may include requirements relating to the residence of the offender:

Provided that—

(a) before making an order containing any such requirements, the court shall consider the home surroundings of the offender; and

(b) where the order requires the offender to reside in any institution or place, the name of the institution or place and the period for which he is so required to reside shall be specified in the order, and that period shall not extend beyond 12 months from the date of the requirement or beyond the date when the order expires.

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[^{F21}(5A) Without prejudice to the generality of subsection (4) above, where a court which is considering making a probation order—

- (a) is satisfied that the offender is of or over 16 years of age and has committed an offence punishable with imprisonment and that the conditions for the making of a community service order under the ^{M1}Community Service by Offenders (Scotland) Act 1978 specified in paragraphs (a) and (c) of section 1(2) of that Act have been met;
- (b) has been notified by the Secretary of State that arrangements exist for persons who reside in the locality where the offender resides, or will be residing when the probation order comes into force, to perform unpaid work as a requirement of a probation order; and
- (c) is satisfied that provision can be made under the arrangements mentioned in paragraph (b) above for the offender to perform unpaid work under the probation order,

it may include in the probation order, in addition to any other requirement, a requirement that the offender shall perform unpaid work for such number of hours (being in total not less than forty nor more than two hundred and forty) as may be specified in the probation order; and the ^{M2}said Act of 1978 shall apply to a probation order including such a requirement as it applies to a community service order, but as if—

- (i) subsections (1), (2)(b) and (d) and (4)(b) of section 1 and sections 4 [^{F22}, 6 and 6A] were omitted;
- (ii) in section 1(5) for the words “subsection (1) above” there were substituted the words “subsection (5A) of section 183 or, as the case may be, 384 of the 1975 Act”; and
- (iii) any other necessary modifications were made.]

[^{F23}(5B) Without prejudice to the generality of subsection (4) above, where a court is considering making a probation order it may include in the probation order, in addition to any other requirement, a requirement that the offender shall pay compensation either in a lump sum or by instalments for any personal injury, loss or damage caused (whether directly or indirectly) by the acts which constituted the offence; and the following provisions of the Criminal Justice (Scotland) Act 1980 shall apply to such a requirement as if any reference in them to a compensation order included a reference to a requirement to pay compensation under this subsection—

- section 58(2) and (3);
- section 59 (except the proviso to subsection (1) and subsection (2));
- section 60;
- section 62;
- section 64 (except paragraph (a));
- section 67.

(5C) Where the court imposes a requirement to pay compensation under subsection (5B) above—

- (a) it shall be a condition of a probation order containing such a requirement that payment of the compensation shall be completed not more than eighteen months after the making of the order or not later than two months before the end of the period of probation whichever first occurs;
- (b) the court, on the application of the offender or the officer of the local authority responsible for supervising the offender, may vary the terms of the

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- requirement, including the amount of any instalments, in consequence of any change which may have occurred in the circumstances of the offender; and
- (c) in any proceedings for breach of a probation order where the breach consists only in the failure to comply with a requirement to pay compensation, a document purporting to be a certificate signed by the clerk of the court for the time being having jurisdiction in relation to the order that the compensation or, where payment by instalments has been allowed, any instalment has not been paid shall be sufficient evidence of such breach.]
- (6) Before making a probation order, the court shall explain to the offender in ordinary language the effect of the order (including any additional requirements proposed to be inserted therein under subsection (4) [F24 or (5)(5A), (5B) or (5C)] of this section or under the next following section) and that if he fails to comply therewith or commits another offence during the probation period he will be liable to be sentenced for the original offence and the court shall not make the order unless the offender expresses his willingness to comply with the requirements thereof.
- (7) The clerk of the court by which a probation order is made or of the appropriate court, as the case may be, shall cause copies thereof to be given to the officer of the local authority who is to supervise the probationer, to the probationer, and to the person in charge of any institution or place in which the probationer is required to reside under the probation order.

Textual Amendments

- F12** Words inserted (*prosp.*) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), **ss. 61(1)(a)**, 75
- F13** Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 10(a)**
- F14** Words substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 10(b)**
- F15** S. 183(1A) inserted (*prosp.*) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), **ss. 61(1)(b)**, 75
- F16** Word inserted by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), **s. 7(a)**
- F17** Words “conducive to” substituted (*prosp.*) for words “necessary for” by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), **ss. 61(1)(c)(i)**, 75
- F18** Word “to” substituted (*prosp.*) for word “for” by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), **ss. 61(1)(c)(ii)**, 75
- F19** Words added by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), **s. 7(a)**
- F20** Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a)**, 65(3)
- F21** S. 183(5A) inserted by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), **s. 7(b)**
- F22** Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 68(2), **Sch. 13 Pt. II para. 3**
- F23** S. 183(5B)(5C) inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a)**, 65(1)(2)(a)
- F24** Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), **s.7(c)** (substituting “(5) or (5A)” for “or (5)” is repealed by virtue of the Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(2), **Sch. 2** and for “or (5A)” there is substituted “(5A), (5B) or (5C)” by virtue of the Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a)**, 65(4)

Modifications etc. (not altering text)

- C2** S. 183 amended by Licensed Premises (Exclusion of Certain Persons) Act 1980 (c. 32, SIF 68A:1, 2), **s. 1(2)(c)**

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Marginal Citations

M1 1978 c. 49(39:1).

M2 1978 c. 49(39:1).

184 Probation orders requiring treatment for mental condition.

- (1) Where the court is satisfied, on the evidence of a registered medical practitioner approved for the purposes of [^{F25}section 20 or 39 of the ^{M3}Mental Health (Scotland) Act 1984], that the mental condition of an offender is such as requires and may be susceptible to treatment but is not such as to warrant his detention in pursuance of a hospital order under [^{F25}Part VI of that Act], or under this Act, the court may, if it makes a probation order, include therein a requirement that the offender shall submit, for such period not extending beyond 12 months from the date of the requirement as may be specified therein, to treatment by or under the direction of a registered medical practitioner with a view to the improvement of the offender's mental condition.
- (2) The treatment required by any such order shall be such one of the following kinds of treatment as may be specified in the order, that is to say—
 - (a) treatment as a resident patient in a hospital within the meaning of the [^{F26M4}Mental Health (Scotland) Act 1984], not being a State hospital within the meaning of the Act;
 - (b) treatment as a non-resident patient at such institution or place as may be specified in the order; or
 - (c) treatment by or under the direction of such registered medical practitioner as may be specified in the order;but except as aforesaid the nature of the treatment shall not be specified in the order.
- (3) A court shall not make a probation order containing such a requirement as aforesaid unless it is satisfied that arrangements have been made for the treatment intended to be specified in the order, and, if the offender is to be treated as a resident patient, for his reception.
- (4) ^{F27}
- ^{F28}(5) Where the medical practitioner by whom or under whose direction a probationer is receiving any of the kinds of treatment to which he is required to submit in pursuance of a probation order is of opinion—
 - (a) that the probationer requires, or that it would be more appropriate for him to receive, a different kind of treatment (whether in whole or in part) from that which he has been receiving, being treatment of a kind which subject to subsection (5A) of this section could have been specified in the probation order; or
 - (b) that the treatment (whether in whole or in part) can be more appropriately given in or at a different institution or place from that where he has been receiving treatment in pursuance of the probation order,he may, subject to subsection (5B) of this section, make arrangements for the probationer to be treated accordingly.
- (5A) Arrangements made under subsection (5) of this section may provide for the probationer to receive his treatment (in whole or in part) as a resident patient in an institution or place notwithstanding that it is not one which could have been specified in that behalf in the probation order.

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- (5B) Arrangements shall not be made under subsection (5) of this section unless—
- (a) the probationer and any officer responsible for his supervision agree;
 - (b) the treatment will be given by or under the direction of a registered medical practitioner who has agreed to accept the probationer as his patient; and
 - (c) where such treatment entails the probationer's being a resident patient, he will be received as such.]
- (6) Where any such arrangements as are mentioned in [^{F29}subsection (5) of this section] are made for the treatment of a probationer—
- (a) the [^{F30}any officer responsible for the probationer's supervision shall notify the appropriate court of the arrangements;] and
 - (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the probation order.
- (7) Subsections (2), (3) and (4) of section 176 of this Act shall apply for the purposes of this section as if for the reference in the said subsection (2) to section 175(1)(a) of this Act there were substituted a reference to subsection (1) of this section.
- (8) Except as provided by this section, a court shall not make a probation order requiring a probationer to submit to treatment for his mental condition.

Textual Amendments

- F25** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 127\(1\), Sch. 3 para. 29\(a\)](#)
- F26** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 127\(1\), Sch. 3 para. 29\(b\)](#)
- F27** [S. 184\(4\)](#) repealed by [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39, SIF 85\), Sch. 3](#)
- F28** [S. 184\(5\)\(5A\)\(5B\)](#) substituted for [s. 184\(5\)](#) by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), s. 36\(2\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)
- F29** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), s. 36\(3\)\(a\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)
- F30** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), s. 36\(3\)\(b\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)

Marginal Citations

- M3** [1984 c. 36\(85\)](#).
- M4** [1984 c. 36\(85\)](#).

185 Discharge and amendment of probation orders.

- (1) The provisions of Schedule 5 to this Act shall have effect in relation to the discharge and amendment of probation orders.
- (2) Where, under section 186 of this Act, a probationer is sentenced for the offence for which he was placed on probation, the probation order shall cease to have effect.

186 Failure to comply with requirement of probation order.

- (1) If, on information on oath from
 - [^{F31}(a)] the officer supervising the probationer,
 - [^{F32}(b)] the director of social work of the local authority whose officer is supervising the probationer; or

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- (c) an officer appointed by the director of social work to act on his behalf for the purposes of this subsection,]

it appears to the court by which the order was made or to the appropriate court that the probationer has failed to comply with any of the requirements of the order, that court may issue a warrant for the arrest of the probationer, or may, if it thinks fit, instead of issuing such a warrant in the first instance, issue a citation requiring the probationer to appear before the court at such time as may be specified in the citation.

- (2) If it is proved to the satisfaction of the court before which a probationer appears or is brought in pursuance of the last foregoing subsection that he has failed to comply with any of the requirements of the probation order, the court may—

- (a) [^{F33}except in the case of a failure to comply with a requirement to pay compensation and] without prejudice to the continuance in force of the probation order, impose a fine not exceeding [^{F34}level 3 on the standard scale]; or

- (b) (i) where the probationer has been convicted for the offence for which the order was made, sentence him for that offence;
(ii) where the probationer has not been so convicted, convict him and sentence him as aforesaid; or

- (c) vary any of the requirements of the probation order, so however that any extension of the probation period shall terminate not later than three years from the date of the probation order [^{F35}]; or

- (d) without prejudice to the continuance in force of the probation order, in a case where the conditions required by the ^{M5}Community Service by Offenders (Scotland) Act 1978 are satisfied, make a community service order, and the provisions of that Act shall apply to such an order as if the failure to comply with the requirement of the probation order were the offence in respect of which the order had been made.]

- (3) A fine imposed under this section in respect of a failure to comply with the requirements of a probation order shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by or in respect of a conviction or a penalty imposed on a person summarily convicted.

- (4) A probationer who is required by a probation order to submit to treatment for his mental condition shall not be deemed for the purpose of this section to have failed to comply with that requirement on the ground only that he has refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances.

- (5) Without prejudice to the provisions of section 187 of this Act, a probationer who is convicted of an offence committed during the probation period shall not on that account be liable to be dealt with under this section for failing to comply with any requirement of the probation order.

Textual Amendments

F31 “(a)” inserted (*prosp.*) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), ss. 61(2)(a), 75

F32 S. 186(1)(b)(c) inserted (*prosp.*) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 61(2)(b)

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- F33** Words inserted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a), 65(5)**
- F34** Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 56, **Sch. 7**
- F35** Word and s. 186(2)(d) added by [Community Service by Offenders \(Scotland\) Act 1978 \(c. 49, SIF 39:1\)](#), **s. 8**

Marginal Citations

- M5** [1978 c. 49\(39:1\)](#).

187 Commission of further offence.

- (1) If it appears to the court by which a probation order has been made (or to the appropriate court) that the probationer to whom the order relates has been convicted by a court in any part of Great Britain of an offence committed during the probation period and has been dealt with for that offence, the first-mentioned court (or the appropriate court) may issue a warrant for the arrest of the probationer, or may, if it thinks fit, instead of issuing a warrant in the first instance issue a citation requiring the probationer to appear before that court at such time as may be specified in the citation, and on his appearance or on his being brought before the court, the court may, if it thinks fit, deal with him under section 186(2)(b) of this Act.
- (2) Where a probationer is convicted by the court which made the probation order (or by the appropriate court) of an offence committed during the probation period, that court may, if it thinks fit, deal with him under section 186(2)(b) of this Act for the offence for which the order was made as well as for the offence committed during the period of probation.

188 Probation orders relating to persons residing in England.

- (1) Where the court by which a probation order is made under section 183 of this Act [^{F36}(not being a probation order including a requirement that the offender shall perform unpaid work)] is satisfied that the offender has attained the age of 17 years and resides or will reside in England, subsection (2) of the said section shall not apply to the order, but the order shall contain a requirement that he be under the supervision of a probation officer appointed for or assigned to the petty sessions area in which the offender resides or will reside; and that area shall be named in the order.
- (2) Where a probation order has been made under section 183 of this Act and the court in Scotland by which the order was made or the appropriate court is satisfied that the probationer has attained the age of 17 years and proposes to reside or is residing in England, the power of that court to amend the order under Schedule 5 to this Act shall include power to insert the provisions required by subsection (1) of this section; and the court may so amend the order without summoning the probationer and without his consent.
- (3) A probation order made or amended by virtue of this section may, notwithstanding section 184(8) of this Act, include a requirement that the probationer shall submit to treatment for his mental condition and—
 - (a) subsections (1), (3) and (7) of the said section 184 and section 3(2) of the ^{M6}Powers of Criminal Courts Act 1973 (all of which regulate the making of probation orders which include any such requirement) shall apply to the making of an order which includes any such requirement by virtue of this subsection as they apply to the making of an order which includes any such

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requirement by virtue of section 184 of this Act and section 3 of the said Act of 1973 respectively; and

- (b) subsections (4) to (6) of section 3 of the said Act of 1973 (functions of supervising officer and medical practitioner where such a requirement has been imposed) shall apply in relation to a probationer who is undergoing treatment in England in pursuance of a requirement imposed by virtue of this subsection as they apply in relation to a probationer undergoing such treatment in pursuance of a requirement imposed by virtue of that section.
- (4) Sections 185(1) and 186(1) of this Act shall not apply to any order made or amended under this section; but subject as hereinafter provided the provisions of the Powers of Criminal Courts Act 1973 (except section 8 of that Act) shall apply to the order as if it were a probation order made under section 2 of that Act:

Provided that section 6(2)(a), (3)(d) and (6) of that Act shall not apply to any such order and section 6(4) and (5) of that Act shall have effect respectively in relation to any such order as if for the first reference in section 6(4) of the Crown Court there were substituted a reference to a court in Scotland and as if for the second such reference therein and for both such references in section 6(5) there were substituted references to the court in Scotland by which the probation order was made or amended under this section.

- (5) If it appears on information to a justice acting for the petty sessions area for which the supervising court within the meaning of the ^{M6}Powers of Criminal Courts Act 1973 acts that a person in whose case a probation order has been made or amended under this section has been convicted by a court in any part of Great Britain of an offence committed during the period specified in the order, he may issue a summons requiring that person to appear, at the place and time specified therein, before the court in Scotland by which the probation order was made or, if the information is in writing and on oath, may issue a warrant for his arrest, directing that person to be brought before the last-mentioned court.
- (6) If a warrant for the arrest of a probationer issued under section 187 of this Act by a court is executed in England, and the probationer cannot forthwith be brought before that court, the warrant shall have effect as if it directed him to be brought before a magistrates' court for the place where he is arrested; and the magistrates' court shall commit him to custody or release him on bail (with or without sureties) until he can be brought or appear before the court in Scotland.
- (7) The court by which a probation order is made or amended in accordance with the provisions of this section shall send three copies of the order to the clerk to the justices for the petty sessions area named therein, together with such documents and information relating to the case as it considers likely to be of assistance to the court acting for that petty sessions area.
- (8) Where a probation order which is amended under subsection (2) of this section is an order to which the provisions of this Act apply by virtue of section 10 of the ^{M6}Powers of Criminal Courts Act 1973 (which relates to probation orders under that Act relating to persons residing in Scotland) then, notwithstanding anything in that section or this section, the order shall, as from the date of the amendment, have effect in all respects as if it were an order made under section 2 of that Act in the case of a person residing in England.

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Textual Amendments

F36 Words inserted by Community Service by [Offenders \(Scotland\) Act 1978 \(c. 49, SIF 39:1\)](#), [Sch. 2 para. 2](#)

Marginal Citations

M6 [1973 c. 62\(39:1\)](#).

189 Further provisions as to probation orders.

- (1) Where the court by which a probation order is made under section 183 of this Act or subsection (6) of this section is satisfied that the person to whom the order relates is under the age of 17 years and resides or will reside in England, subsection (2) of the said section 183 shall not apply to the order but the order shall name the petty sessions area in which that person resides or will reside and the court shall send notification of the order to the clerk to the justices for that area.
- (2) Where a probation order has been made under section 183 of this Act or subsection (6) of this section and the court which made the order or the appropriate court is satisfied that the person to whom the order relates is under the age of 17 years and proposes to reside or is residing in England, the power of that court to amend the order under Schedule 5 to this Act shall include power, without summoning him and without his consent, to insert in the order the name of the petty sessions area aforesaid; and where the court exercises the power conferred on it by virtue of this subsection it shall send notification of the order to the clerk aforesaid.
- (3) A court which sends a notification to a clerk in pursuance of the foregoing provisions of this section shall send to him with it three copies of the probation order in questions and such other documents and information relating to the case as it considers likely to be of assistance to the juvenile court mentioned in the following subsection.
- (4) It shall be the duty of the clerk to whom a notification is sent in pursuance of the foregoing provisions of this section to refer the notification to a juvenile court acting for the petty sessions area named in the order, and on such a reference the court—
 - (a) may make a supervision order under the ^{M7}Children and Young Persons Act 1969 in respect of a person to whom the notification relates; and
 - (b) if it does not make such an order, shall dismiss the case.
- (5) A supervision order made by virtue of the last foregoing subsection shall not include a requirement authorised by section 12 of the said Act of 1969 unless the supervised person is before the court when the supervision order is made, and in relation to a supervision order made by virtue of that subsection—
 - (a) section 15 of that Act shall have effect as if, in subsection (4), paragraph (b) and the words following it were omitted; and
 - (b) section 17(a) of that Act shall have effect as if the second reference to the supervision order were a reference to the probation order in consequence of which the supervision order is made;

and when a juvenile court disposes of a case referred to it in pursuance of the last foregoing subsection, the probation order in consequence of which the reference was made shall cease to have effect.

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- (6) The court which, in pursuance of subsection (1) of section 73 of the ^{M8}Social Work (Scotland) Act 1968, considers a case referred to it in consequence of a notification under paragraph (i) of that subsection (which relates to a case in which a person subject to a supervision order made by virtue of this section moves to Scotland)—
- (a) may, if it is of opinion that the person to whom the notification relates should continue to be under supervision, make a probation order in respect of him for a period specified in the order; and
 - (b) if it does not make such an order, shall dismiss the case;
- and when the court disposes of a case in pursuance of this subsection the supervision order aforesaid shall cease to have effect.
- (7) Notwithstanding any provision to the contrary in section 183 of this Act, a probation order made by virtue of the last foregoing subsection which includes only requirements having the like effect as any requirement or provision of the supervision order to which the notification relates may be made without summoning the person to whom the notification relates and without his consent, and shall specify a period of supervision which shall expire not later than the date on which that supervision order would have ceased to have effect by the effluxion of time; and, except as aforesaid, the provisions of this Act shall apply to that probation order.
- (8) In this and the last foregoing section “petty sessions area” has the same meaning as in the said Act of 1969.

Marginal Citations

M7 1969 c. 54(20).

M8 1968 c. 49(81:3).

190 Supplementary provisions as to probation.

- (1) Any court, on making a probation order, may, if it thinks that such a course is expedient for the purpose of the order, require the offender to give security for his good behaviour.
- (2) Security may be given under the foregoing subsection by consignment with the clerk of the court or by entering into an undertaking to pay the amount, but not otherwise, and such security may be forfeited and recovered in like manner as caution.

191 Effects of probation and absolute discharge.

- (1) Subject as hereinafter provided, a conviction of an offence for which an order is made . . . ^{F37} placing the offender on probation or discharging him absolutely shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of laying it before a court as a previous conviction in subsequent proceedings for another offence:

Provided that where an offender, being not less than 16 years of age at the time of his conviction of an offence for which he is placed on probation as aforesaid, is subsequently sentenced under this Act for that offence, the provisions of this subsection shall cease to apply to the conviction.

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- (2) Without prejudice to the foregoing provisions of this section, the conviction of an offender who is placed on probation or discharged absolutely as aforesaid shall in any event be disregarded for the purposes of any enactment which imposes any disqualification or disability upon convicted persons, or authorises or requires the imposition of any such disqualification or disability.
- (3) The foregoing provisions of this section shall not affect—
- (a) any right of any such offender as aforesaid to appeal against his conviction; or
 - (b) the operation, in relation to any such offender, of any enactment which was in force as at the commencement of section 9(3)(b) of the ^{M9}Criminal Justice (Scotland) Act 1949 and is expressed to extend to persons dealt with under section 1(1) of the ^{M10}Probation of Offenders Act 1907 as well as to convicted persons.
- (4) Where a person charged with an offence has at any time previously been placed on probation or discharged absolutely in respect of the commission by him of an offence it shall be competent, in the proceedings for that offence, to bring before the court the probation order or order of absolute discharge in like manner as if the order were a conviction.

Textual Amendments

F37 Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 1, **Sch. 8**

Modifications etc. (not altering text)

C3 S. 191 amended by [Licensed Premises \(Exclusion of Certain Persons\) Act 1980 \(c. 32, SIF 68A:1,2\)](#), s. **1(2)(c)**

C4 S. 191 excluded by [Road Traffic Offenders Act 1988 \(c. 53, SIF 107:1\)](#), s. **46(3)**

Marginal Citations

M9 1949 c. 94.(39:1).

M10 1907 c. 17.

192 Probation reports.

Where a report by an officer of a local authority is made to any court (other than a court whose procedure is regulated by rules made under section 366(2) of this Act) with a view to assisting the court in determining the most suitable method of dealing with any person in respect of an offence, a copy of the report shall be given by the clerk of the court to the offender or his solicitor:

Provided that if the offender is under 16 years of age and is not represented by counsel or a solicitor, a copy of the report need not be given to him but shall be given to his parent or guardian if present in court.

Penalties for statutory offences

193 Power to mitigate penalties.

In proceedings in respect of the contravention of any statute or order, where each contravention involves any of the following punishments, namely, imprisonment, the

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imposition of a fine, the finding of caution for good behaviour or otherwise, either singly or in combination with imprisonment or fine, the court shall have in addition to any other powers conferred by Act of Parliament the following powers, viz.:—

- (1) to reduce the period of imprisonment:
- (2) to substitute for imprisonment (either with or without caution for good behaviour, not exceeding [^{F38}the prescribed sum within the meaning of section 289B of this Act] and a period of 12 months) a fine . . . [^{F39} .
- (3) to substitute the finding of caution not exceeding [^{F38}the prescribed sum within the meaning of section 289B of this Act] and the period of 12 months for a fine or imprisonment:
- (4) to reduce the amount of any fine:
- (5) to dispense with the finding of caution:

Provided that,

- (i) where any Act carries into effect a treaty, convention, or agreement with a foreign state, and such treaty, convention, or agreement stipulates for a fine of minimum amount, the court shall not be entitled by virtue of this section to reduce the amount of such fine below that minimum amount;
- (ii) this section shall not apply to proceedings taken under any Act relating to any of Her Majesty's regular or auxiliary forces.

Textual Amendments

F38 Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [s. 46\(2\)](#)

F39 Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 6 para. 1](#), [Sch. 8](#)

[^{F40}193A] **Fines on conviction on indictment to be without limit.**

[Where a person convicted on indictment of any offence (whether triable only on [^{F41}(1) indictment or triable either on indictment or summarily [^{F42}other than by virtue of [^{F43}section 457A(4) of this Act]) would, apart from this [^{F44}subsection] be liable to a fine [^{F45}of or] not exceeding a specified amount, he shall by virtue of this [^{F44}subsection] be liable to a fine of any amount.]

[Where any Act confers a power by subordinate instrument to make a person liable on [^{F46}(2) conviction on indictment of any offence mentioned in subsection (1) above to a fine or a maximum fine of a specified amount, or which shall not exceed a specified amount, the fine which may be provided in the exercise of that power shall by virtue of this subsection be a fine of an unlimited amount.]]

Textual Amendments

F40 [S. 193A](#) inserted by [Criminal Law Act 1977 \(c. 45, SIF 39:1\)](#), [Sch. 11 para. 1](#)

F41 Word inserted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 15 para. 17\(a\)](#)

F42 Words inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 37](#)

F43 Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 15 para. 17\(b\)](#)

F44 Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 15 para. 17\(d\)](#)

F45 Words inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 15 para. 17\(c\)](#)

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F46 S. 193A(2) inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 15 para. 17\(e\)](#)

193B **F47**

Textual Amendments

F47 S. 193B which was inserted by [Law Reform \(Miscellaneous Provisions\) Act 1985 \(c. 73, SIF 39:1\)](#), s.39, [Sch. 3 para. 1](#) is now repealed by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(2), [Sch. 2](#)

Fines

[^{F48}194 Application of summary procedure provisions relating to fines.

- (1) The provisions of Part II of this Act specified in subsection (2) below shall, subject to any necessary modifications, apply in relation to solemn proceedings as they apply in relation to summary proceedings.
- (2) The provisions mentioned in subsection (1) above are—
 - section 395(1) (means of offender to be taken into account);
 - section 395A (power to remit fines);
 - section 396 (time for payment);
 - section 397 (further time for payment);
 - section 398 (reasons for default);
 - section 399 (payment by instalments);
 - section 400 (supervision pending payment of fine);
 - section 401(2) and (3) (supplementary provisions);
 - section 403 (transfer of fine orders);
 - section 404 (action of clerk of court on transfer of fine order);
 - section 406 (substitution of custody for imprisonment where child defaults on fine);
 - section 407 (maximum period of imprisonment for non-payment of fine);
 - section 408 (discharge from imprisonment to be specified);
 - section 409 (payment of fine in part by prisoner);
 - section 411 (recovery by civil diligence);
 - Schedule 7 (application of sums paid as part of fine under section 409).]

Textual Amendments

F48 S. 194 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 47, [Sch. 6 para. 3](#)

Modifications etc. (not altering text)

C5 S. 194 amended by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. [7\(1\)](#), [47\(4\)\(a\)](#)

195 **F49**

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Textual Amendments

F49 Ss. 195, 197–202 repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 6 para. 1](#), [Sch. 8](#)

196 Fines, etc., may be enforced in other district.

[^{F50}(1)] Any sentence or decree for any fine or expenses pronounced by any sheriff court may be enforced against the person or effects of any party against whom any such sentence or decree shall have been awarded in any other sheriff court district, as well as in the district where such sentence or decree is pronounced:

Provided that such sentence or decree, or an extract thereof, shall be first produced to and indorsed by the sheriff of such other district competent to have pronounced such sentence or decree in such other district.

[^{F51}(2) A fine imposed by the High Court shall be remitted for enforcement to, and shall be enforceable as if it had been imposed by—

- (a) where the person upon whom the fine was imposed resides in Scotland, the sheriff for the district where that person resides;
- (b) where that person resides outwith Scotland, the sheriff before whom he was brought for examination in relation to the offence for which the fine was imposed.]

Textual Amendments

F50 Word inserted by virtue of [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 48, [Sch. 6 para. 3](#)

F51 S. 196(2) inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 48, [Sch. 6 para. 3](#)

Modifications etc. (not altering text)

C6 S. 196 applied by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), [ss. 7\(1\)](#), 16(3), 47(4)(a)

C7 S. 196 extended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1996 c. 20, [ss. 70\(2\)](#), 80(1), 113(1); S.I. 1996/517, [arts. 3\(2\)](#), 4–6, [Sch. 2](#)

197— ^{F52}
202.

Textual Amendments

F52 Ss. 195, 197–202 repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 6 para. 1](#), [Sch. 8](#)

203 Fines payable to H.M. Exchequer.

Any fine imposed in the High Court upon the accused, and upon a juror for non-attendance, and any forfeiture for non-appearance of a party, witness or juror in the High Court shall be payable to and recoverable by the proper officer in Exchequer for Her Majesty’s use, unless in a case where the High Court shall, by the sentence awarding the said fine, order the same or any part thereof to be otherwise disposed of.

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Modifications etc. (not altering text)

- C8** S. 203 applied by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 7(1)**, 16(3), 47(4)(a)
- C9** S. 203 extended by [Prevention of Terrorism \(Temporary Provisions\) Act 1989 \(c. 4, SIF 39:2\)](#), s. 13(8), **Sch. 4 para. 12(4)**
- C10** S. 203 amended (5.12.1996) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\)](#), **ss. 20(4)**, 75; S.I. 1996/2894, art. 3, **Sch.**
- C11** S. 203 extended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, ss. 70(2), 80(1), 100, 113(1), **Sch. 3 para. 4(4)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

204 ^{F53}

Textual Amendments

- F53** Ss. 204, 208–211 repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 5, **Sch. 8** and S.I. 1983/1580, **art. 3**

Imprisonment, etc.

[^{F54}**205** **Punishment for murder.**

- (1) Subject to subsections (2) and (3) below, a person convicted of murder shall be sentenced to imprisonment for life.
- (2) Where a person convicted of murder is under the age of 18 years he shall not be sentenced to imprisonment for life but to be detained without limit of time and shall be liable to be detained in such place, and under such conditions, as the Secretary of State may direct.
- (3) Where a person convicted of murder has attained the age of 18 years but is under the age of 21 years he shall not be sentenced to imprisonment for life but to be detained in a young offenders institution and shall be liable to be detained for life.]

Textual Amendments

- F54** S. 205, 205A substituted for s. 205 by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **s. 43**

205A **Recommendation as to minimum period of detention for person convicted of murder.**

- (1) On sentencing any person convicted of murder a judge may make a recommendation as to the minimum period which should elapse before, under section [^{F55}26 of the [Prisons \(Scotland\) Act 1989](#)], the Secretary of State releases that person on licence.
- (2) When making a recommendation under subsection (1) above, the judge shall state his reasons for so recommending.
- (3) Notwithstanding the proviso to subsection (1) of section 228 of this Act it shall be competent to appeal under paragraph (b) or (c) of that subsection against a

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recommendation made under subsection (1) above; and for the purposes of such appeal (including the High Court’s power of disposal under section 254(3)(b) of this Act) the recommendation shall be deemed part of the sentence passed on conviction.

Textual Amendments

F55 Words substituted by [Prisons \(Scotland\) Act 1989 \(c. 45, SIF 39:1\)](#), s. 45(1), **Sch. 2 para. 11**

[^{F56}**206 Detention of children convicted on indictment.**

(1) Subject to section 205 of this Act, where a child is convicted and the court is of the opinion that no other method of dealing with him is appropriate, it may sentence him to be detained for a period which it shall specify in the sentence; and the child shall during that period be liable to be detained in such place and on such conditions as the Secretary of State may direct .

(2)^{F57}]

Textual Amendments

F56 S. 206 substituted for s. 206(1) by [Prisons \(Scotland\) Act 1989 \(c. 45, SIF 39:1\)](#), s. 45(1), **Sch. 2 para. 12**

F57 S. 206(2)–(7) repealed by [Prisons \(Scotland\) Act 1989 \(c. 45, SIF 39:1\)](#), s. 45(2), **Sch. 3**

206A^{F58}

Textual Amendments

F58 S. 206A which was inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 39:1\)](#), s. 45(1) is now repealed by [Prisons \(Scotland\) Act 1989 \(c. 45, SIF 39:1\)](#), s. 45(2), **Sch. 3**

[^{F59}**207 Detention of young offenders.**

- (1) It shall not be competent to impose imprisonment on a person under 21 years of age.
- (2) Subject to section 205(2) and (3) of this Act and to subsections (3) and (4) below a court may impose detention (whether by way of sentence or otherwise) on a person, who is not less than 16 but under 21 years of age, where but for subsection (1) above the court would have power to impose a period of imprisonment; and the period of detention imposed under this section on any person shall not exceed the maximum period of imprisonment which might otherwise have been imposed.
- (3) The court shall not under subsection (2) above impose detention on a person unless it is of the opinion that no other method of dealing with him is appropriate; and the court shall state its reasons for that opinion, and, except in the case of the High Court, those reasons shall be entered in the record of proceedings.
- (4) To enable the court to form an opinion under subsection (3) above, it shall obtain (from an officer of a local authority or otherwise) such information as it can about the

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offender’s circumstances; and it shall also take into account any information before it concerning the offender’s character and physical and mental condition.

[A sentence of detention imposed under this section shall be a sentence of detention ^{F60}(5) in a young offenders institution.]

(11) [^{F61}Section 18 (functions of Parole Board), section 24 (remission for good conduct) and sections 22, 26, 28 and 29 (release on licence) of the Prisons (Scotland) Act 1988 shall apply] to a person sentenced under this section as those enactments apply to a person sentenced to a period of imprisonment.]

Textual Amendments

F59 S. 207 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 45(1), **Sch. 6 para. 5** and S.I. 1983/1580 art. 3

F60 S. 207(5) substituted for s. 207(5)–(10) by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 124(1)

F61 Words substituted as provided by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(1), **Sch. 2 para. 13**

Modifications etc. (not altering text)

C12 S. 207 extended by Contempt of Court Act 1981 (c. 49, SIF 39:3), s. 15(3)

208– ^{F62}
211

Textual Amendments

F62 Ss. 204, 208–211 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 5, **Sch. 8** and S.I. 1983/1580, **art. 3**

212 Recall to young offenders institution on re-conviction.

- (1) Where a person sentenced to detention . . . ^{F63}[^{F64}under section 207 of this Act], being under supervision after his release from such [^{F65}detention], is convicted of an offence punishable with imprisonment, the court may, [^{F66}, except where the person convicted is subject to a licence granted under section 60(1) or section 61 of the ^{M11}Criminal Justice Act 1967 [^{F67}or section 22(1) or section 26 of the Prisons (Scotland) Act 1989], make an order for his recall.]
- (2) An order for the recall of a person made as aforesaid shall have the like effect as an order for recall made by the Secretary of State under section [^{F67}32 of the said Act of 1989].

Textual Amendments

F63 Words repealed by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 11(a)**

F64 Words from “under” to “Act” substituted for words “young offenders institution” by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 38(i)** and S.I. 1983/1580, **art. 3**

F65 Word substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 11(b)**

Status: Point in time view as at 01/02/1991.

Changes to legislation: Criminal Procedure (Scotland) Act 1975 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- F66** Words from “, except” to “recall” substituted for “instead” to “recall” by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 38\(ii\)](#) and [S.I. 1983/1580, art. 3](#)
- F67** Words inserted by [Prisons \(Scotland\) Act 1989 \(c. 45, SIF 39:1\)](#), s. 45(1), [Sch. 2 para. 14](#)

Marginal Citations

- M11** [1967 c. 80\(39:1\)](#).

[^{F68}212A Supervised release orders. **E+W+S**

- (1) Where a person is convicted of an offence and is sentenced to imprisonment for a term of not less than twelve months but less than four years, the court on passing sentence may, if it considers that it is necessary to do so to protect the public from serious harm from the offender on his release, make such order as is mentioned in subsection (2) below.
- (2) The order referred to in subsection (1) above (to be known as a “supervised release order”) is that the person, during a relevant period—
 - (a) be under the supervision either of a relevant officer of a local authority or of a probation officer appointed for or assigned to a petty sessions area (such local authority or the justices for such area to be designated under section 14(4) or 15(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993); and
 - (b) comply with—
 - (i) such requirements as are specified in the order; and
 - (ii) such requirements as that officer may reasonably specify, for the purpose of securing the good conduct of the person or preventing, or lessening the possibility of, his committing a further offence (whether or not an offence of the kind for which he was sentenced).
- (3) A supervised release order—
 - (a) shall be as nearly as possible in such form as may be prescribed by Act of Adjournal;
 - (b) for the purposes of any appeal or review constitutes part of the sentence of the person in respect of whom the order is made; and
 - (c) shall have no effect during any period in which the person is subject to a licence under Part I of the said Act of 1993.
- (4) Before making a supervised release order as respects a person the court shall explain to him, in as straightforward a way as is practicable, the effect of the order and the possible consequences for him of any breach of it.
- (5) The clerk of the court by which a supervised release order is made in respect of a person shall—
 - (a) forthwith send a copy of the order to the person and to the Secretary of State; and
 - (b) within seven days after the date on which the order is made, send to the Secretary of State such documents and information relating to the case and to the person as are likely to be of assistance to a supervising officer.
- (6) In this section—

“relevant officer” has the same meaning as in Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993;

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“relevant period” means such period as may be specified in the supervised release order, being a period—

- (a) not exceeding twelve months after the date of the person’s release; and
- (b) no part of which is later than the date by which the entire term of imprisonment specified in his sentence has elapsed; and

“supervising officer” means, where an authority has or justices have been designated as is mentioned in subsection (2)(a) above for the purposes of the order, any relevant officer or, as the case may be, probation officer who is for the time being supervising for those purposes the person released.]

[^{F69}(7) The foregoing provisions of this section apply to a person sentenced under section 207 or 415 of this Act as the provisions apply to a person sentenced to a period of imprisonment.]

Textual Amendments

F68 S. 212A inserted (*prosp.*) by 1993 c. 9, ss. 5, 6, 10, 14(1), 48(2) (with ss. 5(1), 6(1), 10, 27, 47(2), Sch. 6 paras. 1, 2, 6, 7)

F69 S. 212A(7) added (27.7.1993) by 1993 c. 36, s.69

Modifications etc. (not altering text)

C13 S. 212A excluded (*prosp.*) by 1993 c. 9, ss. 5, 6, 10, 14(2), 48(2) (with ss. 5(1), 6(1), 10, 27, 47(2), Sch. 6 paras. 1, 2, 6, 7)

S. 212A modified (*prosp.*) by 1993 c. 9, ss. 14(3), 48(2) (with ss. 5(1), 6(1), 10, 27, 47(2), Sch. 6 paras. 1, 2, 6, 7)

[^{F88}212A Supervised release orders. **S**

- (1) Where a person is convicted of an offence and is sentenced to imprisonment for a term of not less than twelve months but less than four years, the court on passing sentence may, if it considers that it is necessary to do so to protect the public from serious harm from the offender on his release, make such order as is mentioned in subsection (2) below.
- (2) The order referred to in subsection (1) above (to be known as a “supervised release order”) is that the person, during a relevant period—
 - (a) be under the supervision either of a relevant officer of a local authority or of a probation officer appointed for or assigned to a petty sessions area (such local authority or the justices for such area to be designated under section 14(4) or 15(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993); and
 - (b) comply with—
 - (i) such requirements as are specified in the order; and
 - (ii) such requirements as that officer may reasonably specify, for the purpose of securing the good conduct of the person or preventing, or lessening the possibility of, his committing a further offence (whether or not an offence of the kind for which he was sentenced).
- (3) A supervised release order—
 - (a) shall be as nearly as possible in such form as may be prescribed by Act of Adjournal;

Status: Point in time view as at 01/02/1991.

Changes to legislation: Criminal Procedure (Scotland) Act 1975 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) for the purposes of any appeal or review constitutes part of the sentence of the person in respect of whom the order is made; and
 - (c) shall have no effect during any period in which the person is subject to a licence under Part I of the said Act of 1993.
- (4) Before making a supervised release order as respects a person the court shall explain to him, in as straightforward a way as is practicable, the effect of the order and the possible consequences for him of any breach of it.
- (5) The clerk of the court by which a supervised release order is made in respect of a person shall—
- (a) forthwith send a copy of the order to the person and to the Secretary of State; and
 - (b) within seven days after the date on which the order is made, send to the Secretary of State such documents and information relating to the case and to the person as are likely to be of assistance to a supervising officer.
- (6) In this section—
- “relevant officer” has the same meaning as in Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993;
 - “relevant period” means such period as may be specified in the supervised release order, being a period—
 - (a) not exceeding twelve months after the date of the person’s release; and
 - (b) no part of which is later than the date by which the entire term of imprisonment specified in his sentence has elapsed; and
 - “supervising officer” means, where an authority has or justices have been designated as is mentioned in subsection (2)(a) above for the purposes of the order, any relevant officer or, as the case may be, probation officer who is for the time being supervising for those purposes the person released.]

Textual Amendments

F88 S. 212A inserted (*prosp.*) by 1993 c. 9, ss. 5, 6, 10, 14(1), 48(2) (with ss. 5(1), 6(1), 10, 27, 47(2), Sch. 6 paras. 1, 2, 6, 7)

Modifications etc. (not altering text)

C15 S. 212A excluded (*prosp.*) by 1993 c. 9, ss. 5, 6, 10, 14(2), 48(2) (with ss. 5(1), 6(1), 10, 27, 47(2), Sch. 6 paras. 1, 2, 6, 7)
S. 212A modified (*prosp.*) by 1993 c. 9, ss. 14(3), 48(2) (with ss. 5(1), 6(1), 10, 27, 47(2), Sch. 6 paras. 1, 2, 6, 7)

213 F70

Textual Amendments

F70 S. 213 repealed by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(2), Sch. 3

Status: Point in time view as at 01/02/1991.

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214 Return to prison in case of breach of supervision.

- (1) If, on sworn information laid by or on behalf of the Secretary of State, it appears to the sheriff that a person, being under supervision under [F71]section 30 of the Prisons (Scotland) Act 1989], has failed to comply with any of the requirements imposed on him by his notice of supervision, the sheriff may issue a warrant for the arrest of that person or may, if he thinks fit, instead of issuing such a warrant in the first instance, issue a citation requiring the person to appear before him at such time as may be specified in the citation.
- (2) If it is proved to the satisfaction of the sheriff before whom a person appears or is brought in pursuance of the last foregoing subsection that the person has failed to comply with any of the requirements of the notice of supervision, the sheriff shall, unless having regard to all the circumstances of the case, he considers it unnecessary or inexpedient to do so, order that he be sent back to prison for such term as may be specified in that order, not exceeding whichever is the shorter of the following, that is to say—
 - (a) a period of three months;
 - (b) a period equal to so much of the period of 12 months referred to in [F72]section 30(4) of the said Act of 1989] as was unexpired on the date on which proceedings were commenced.
- (3) Subject to the following provisions of this section, Part II of this Act shall apply in relation to proceedings for an order as aforesaid as it applies in relation to proceedings in respect of a summary offence, and references in Part II of this Act to an offence, trial, conviction or sentence shall be construed accordingly.
- (4) Proceedings for an order under subsection (2) of this section may be brought before a sheriff having jurisdiction in the area in which the supervising officer carries out his duties.
- (5) A warrant issued for the purposes of proceedings for an order under subsection (2) above may, if the person laying the information so requests, bear an endorsement requiring any constable charged with its execution to communicate with the Secretary of State before arresting the person under supervision if the constable finds that that person is earning an honest livelihood or that there are other circumstances which ought to be brought to the notice of the Secretary of State.
- (6) Where a person while under supervision under [F73]section 30 of the said Act of 1989] is convicted of an offence for which the court has power to pass sentence of imprisonment, the court may, instead of dealing with him in any other manner, make such an order as could be made by a sheriff under subsection (2) of this section in proceedings for such an order.
- (7) The Secretary of State may at any time release from prison a person who has been sent back to prison under subsection (2) or (6) of this section; and the provisions of this section and of [F74]section 30 of the said Act of 1989] shall apply to a person released by virtue of this subsection, subject to the following modifications:—
 - (a) that the period of twelve months referred to in [F74]subsection (4) of the said section 30] shall be calculated from the date of his original release; and
 - (b) in relation to any further order for sending him back to prison under this section, the period referred to in subsection (2)(a) of this section shall be reduced by any time during which he has been detained by virtue of the previous order.

Status: Point in time view as at 01/02/1991.

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- (8) In any proceedings, a certificate purporting to be signed by or on behalf of the Secretary of State and certifying—
- (a) that a notice of supervision was given to any person in the terms specified in the certificate and on the date so specified; and
 - (b) either that no notice has been given to him under [^{F75}subsection (5) of section 30 of the said Act of 1989] or that a notice has been so given in the terms specified in the certificate,
- shall be sufficient evidence of the matters so certified; and the fact that a notice of supervision was given to any person shall be sufficient evidence that he was a person to whom [^{F75}the said section 30] applies.
- (9) For the purposes of Part III of the ^{M12}Criminal Justice Act 1961, a person who has been sent back to prison under subsection (2) or (6) of this section, and has not been released again, shall be deemed to be serving part of his original sentence, whether or not the term of that sentence has in fact expired.

Textual Amendments

- F71** Words substituted by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(1), **Sch. 2 para. 15(a)**
- F72** Words substituted by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(1), **Sch. 2 para. 15(b)**
- F73** Words substituted by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(1), **Sch. 2 para. 15(c)**
- F74** Words substituted by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(1), **Sch. 2 para. 15(d)**
- F75** Words substituted by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(1), **Sch. 2 para. 15(e)**

Marginal Citations

- M12** 1961 c. 39(39:1).

[^{F76}215 Legal custody.

Any person required or authorised by or under this Act or [^{F77}any other enactment or any subordinate instrument] to be taken to any place, or to be detained or kept in custody shall, while being so taken or detained or kept, be deemed to be in legal custody.]

Textual Amendments

- F76** S. 215 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 39**
- F77** Words substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 12**

Miscellaneous provisions as to conviction, sentence, etc.

216 Art and part guilt of statutory offence.

[^{F78}(1)] A person may be convicted of, and punished for, contravention of any [^{F79}enactment], notwithstanding that he was guilty of such contravention as art and part only.

[^{F80}(2)] Without prejudice to subsection (1) above or to any express provision in any enactment having the like effect to this subsection, any person who aids, abets, counsels, procures

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or incites any other person to commit an offence against the provisions of any enactment shall be guilty of an offence and shall be liable on conviction, unless the enactment otherwise requires, to the same punishment as might be imposed on conviction of the first-mentioned offence.]

Textual Amendments

- F78** S. 216 renumbered as s. 216(1) by virtue of [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a)**, 64(1)(2)
- F79** Word substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a)**, 64(1)(2)
- F80** S. 216(2) inserted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a)**, 64(1)(2)

217 Form of sentence.

- (1) In any case the sentence to be pronounced shall be announced by the judge in open court and shall be entered in the record in the form now in use in the High Court, and it shall not be necessary to read the entry of the sentence from the record.
- (2) In recording sentences of imprisonment, it shall be sufficient to minute the term of imprisonment to which the court sentenced the panel, without specifying the prison in which the sentence is to be carried out; and such entries of sentences, signed by the clerk of court, shall be full warrant and authority for all execution to follow thereon, and for the clerk to issue extracts thereof for carrying the same into execution or otherwise.
- (3) In extracting sentences of imprisonment, the extract may be in the form set out in an Act of Adjournal under this Act or as nearly as may be in such form.

217A Sentence following guilty plea.

In determining what sentence to pass on, or what other disposal or order to make in relation to, an offender who has pled guilty to an offence, a court may take into account—

- (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and
- (b) the circumstances in which that indication was given.

218 Consideration of time spent in custody.

A court, in passing a sentence of imprisonment or detention . . . ^{F82} on a person for any offence, shall, in determining the period of imprisonment or detention, have regard to any period of time spent in custody by that person on remand awaiting trial or sentence.

Textual Amendments

- F82** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **Sch. 8** and S.I. 1983/1580, **art. 3**

Status: Point in time view as at 01/02/1991.

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219 Deferred sentence.

- [^{F83}(1)] It shall be competent for a court to defer sentence after conviction for a period and on such conditions as the court may determine.
- [^{F84}(2)] If it appears to the court by which sentence on a person has been deferred under subsection (1) above that that person has been convicted, during the period of deferment, by a court in any part of Great Britain of an offence committed during that period and has been dealt with for that offence, the first mentioned court may issue a warrant for the arrest of that person, or may, instead of issuing such a warrant in the first instance, issue a citation requiring him to appear before it at such time as may be specified in the citation; and on his appearance or on his being brought before the court it may deal with him in any manner in which it would be competent for it to deal with him on the expiry of the period of deferment.
- (3) Where a court which has deferred sentence under subsection (1) above on a person convicts that person of another offence during the period of deferment, it may deal with him for the original offence in any manner in which it would be competent for it to deal with him on the expiry of the period of deferment, as well as for the offence committed during the said period.]

Textual Amendments

F83 Word inserted by virtue of [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 54

F84 S. 219(2) inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 54

220 Capital sentence not competent under this Act.

A capital sentence shall not be competent under this Act.

221 No penal servitude or hard labour.

- (1) No person shall be sentenced by a court to penal servitude; and every enactment conferring power on a court to pass a sentence of penal servitude in any case shall be construed as conferring power to pass a sentence of imprisonment for a term not exceeding the maximum term of penal servitude for which a sentence could have been passed in that case immediately before 12th June 1950:

Provided that nothing in this subsection shall be construed as empowering a court, other than the High Court, to pass a sentence of imprisonment for a term exceeding [^{F85}three years].

- (2) No person shall be sentenced by a court to imprisonment with hard labour; and every enactment conferring power on a court to pass a sentence of imprisonment with hard labour in any case shall be construed as conferring power to pass a sentence of imprisonment for a term not exceeding the term for which a sentence of imprisonment with hard labour could have been passed in that case immediately before 12th June 1950; and so far as any enactment requires or permits prisoners to be kept to hard labour it shall cease to have effect.

Status: Point in time view as at 01/02/1991.

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Textual Amendments

F85 Words substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a), 58(3)**

222 No fees exigible.

No fees or expenses of any description shall be exigible by the clerk or other officer of court from any person on whom an indictment shall have been served, unless the same shall form part of the sentence of the court; but the fees exigible from the prosecutor by such clerk or officer shall not be affected by the provisions of this section.

223 Forfeiture of property.

- (1) Where a person is convicted of an offence and the court which passes sentence is satisfied that any property which was in his possession or under his control at the time of his apprehension—
 - (a) has been used for the purpose of committing, of facilitating the commission of, any offence; or
 - (b) was intended by him to be used for that purpose,
 that property shall be liable to forfeiture, and any property forfeited under this section shall be disposed of as the court may direct.
- (2) Any reference in this section to facilitating the commission of an offence shall include a reference to the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.

Modifications etc. (not altering text)

C14 [S. 223](#) excluded by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 75, **Sch. 3 para. 3(b)**

^{F86}223A Disqualification in Scotland where vehicle used to commit offence.

- (1) Where a person is convicted of an offence (other than one triable only summarily) and the court which passes sentence is satisfied that a motor vehicle was used for the purpose of committing, or facilitating the commission of that offence, the court may order him to be disqualified for such period as the court thinks fit from holding or obtaining a licence to drive a motor vehicle granted under Part III of the Road Traffic Act 1988.
- (2) A court which makes an order under this section disqualifying a person from holding or obtaining a licence shall require him to produce any such licence held by him and its counterpart.
- (3) Any reference in this section to facilitating the commission of an offence shall include a reference to the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.
- (4) In relation to licences which came into force before 1st June 1990, the reference in subsection (2) above to the counterpart of a licence shall be disregarded.

Status: Point in time view as at 01/02/1991.

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224 Warrant of search for forfeited articles.

Where a court has made an order for the forfeiture of an article, the court or any justice may, if satisfied on information on oath—

- (a) that there is reasonable cause to believe that the article is to be found in any place or premises; and
- (b) that admission to the place or premises has been refused or that a refusal of such admission is apprehended,

issue a warrant of search which may be executed according to law.

225 Interlocutors to be signed by clerk.

In the High Court, interlocutors shall be distinctly minuted or entered in the record, and that entry shall be signed by the clerk.

226 Record copies to be inserted in books of adjournal of High Court.

The record copies of indictments brought before the High Court, and the record copies of all printed proceedings in the said court, shall be inserted in the books of adjournal, either at their proper place in the body of such books, or at the end of the volume wherein the relative procedure is recorded, in which case they shall be distinctly referred to as so appended; and the books of adjournal so made up and completed shall be and be taken to be and be used as the books of adjournal of the said court.

227 Indictment to be inserted in record book in sheriff court.

When an indictment in any sheriff court is either wholly or partly printed, a copy of it, either wholly or partly printed, shall be inserted in the record book of court, either in its proper place in the body thereof or at the end of the volume wherein the relative procedure is recorded, in which last case it shall be distinctly referred to as so appended.

[^{F87}227A Correction of entries.

- (1) Subject to the provisions of this section, it shall be competent to correct an entry in—
 - (a) the record of proceedings in a solemn prosecution; or
 - (b) the extract of a sentence passed or an order of court made in such proceedings, in so far as that entry constitutes an error of recording or is incomplete.
- (2) Such entry may be corrected—
 - (a) by the clerk of the court, at any time before either the sentence (or order) of the court is executed or, on appeal, the proceedings are transmitted to the Clerk of Justiciary;
 - (b) by the clerk of the court, under the authority of the court which passed the sentence or made the order, at any time after the execution of the sentence (or order) of the court but before such transmission as is mentioned in paragraph (a) above; or
 - (c) by the clerk of the court under the authority of the High Court in the case of a remit under subsection (4)(b) below.

Status: Point in time view as at 01/02/1991.

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- (3) A correction in accordance with paragraph (b) or (c) of subsection (2) above shall be intimated to the prosecutor and to the former accused or his solicitor.
- (4) Where, during the course of an appeal, the High Court becomes aware of an erroneous or incomplete entry, such as is mentioned in subsection (1) above, the court—
- (a) may consider and determine the appeal as if such entry were corrected; and
 - (b) either before or after the determination of the appeal, may remit the proceedings to the court of first instance for correction in accordance with subsection (2)(c) above.
- (5) Any correction under subsections (1) and (2) above by the clerk of the court shall be authenticated by his signature and, if such correction is authorised by a court, shall record the name of the judge or judges authorising such correction and the date of such authority.]

Textual Amendments

F87 S. 227A inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 54

Status:

Point in time view as at 01/02/1991.

Changes to legislation:

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