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# Criminal Procedure (Scotland) Act 1975

## 1975 CHAPTER 21

### PROCEDURE PRIOR TO TRIAL

*Arrest, Judicial Examination, Custody, Bail, Etc.*

#### 12 Petitions for Warrants.

Petitions for warrant to arrest and commit persons suspected of or charged with crime may set forth the charge in the forms set out in Schedule A to the <sup>M1</sup>Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form; and the provisions of sections 43 to 46 and 48 to 55 of this Act shall apply to any such petition as they apply to the indictment.

#### Marginal Citations

M1 1887 c. 35(39:1).

#### 13 Warrants for arrest of escaped prisoners and mental patients.

- (1) On an application being made to a sheriff or justice alleging that any person is—
  - (a) an offender unlawfully at large from a prison or other institution to which the Prison Act applies in which he is required to be detained after being convicted of an offence; or
  - (b) a convicted mental patient liable to be retaken under [<sup>F1</sup>section 18, 38(7) or 138 of the <sup>M2</sup>Mental Health Act 1983], [<sup>F2</sup>section 28, 44 or 121 of the <sup>M3</sup>Mental Health (Scotland) Act 1984] or section 30 or 108 of the <sup>M4</sup>Mental Health Act (Northern Ireland) 1961 (retaking of mental patients who are absent without leave or have escaped from custody);

the sheriff or justice may issue a warrant to arrest him and bring him before any sheriff.

- (2) Where a person is brought before a sheriff in pursuance of a warrant for his arrest under this section, the sheriff shall, if satisfied that he is the person named in the warrant and if satisfied as to the facts mentioned in paragraph (a) or (b) of the foregoing subsection,

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order him to be returned to the prison or other institution where he is required or liable to be detained or, in the case of a convicted mental patient, order him to be kept in custody or detained in a place of safety pending his admission to hospital.

- (3) [<sup>F3</sup>Section 137 of the <sup>M5</sup>Mental Health Act 1983], [<sup>F4</sup>section 120 of the <sup>M6</sup>Mental Health (Scotland) Act 1984] and section 107 of the <sup>M7</sup>Mental Health Act (Northern Ireland) 1961 (custody, conveyance and detention of certain mental patients) shall apply to a convicted mental patient required by this section to be conveyed to any place or to be kept in custody or detained in a place of safety as they apply to a person required by or by virtue of [<sup>F3</sup>the said Act of 1983], [<sup>F4</sup>1984] or 1961, as the case may be, to be so conveyed, kept or detained.

- (4) In this section—

“convicted mental patient” means a person liable after being convicted of an offence to be detained under [<sup>F5</sup>Part III of the <sup>M8</sup>Mental Health Act 1983], [<sup>F6</sup>Part VI of the <sup>M9</sup>Mental Health (Scotland) Act 1984], Part III of the <sup>M10</sup>Mental Health Act (Northern Ireland) 1961 or section 25, 175, 177 or 178 of this Act in pursuance of a hospital order or transfer direction together with an order or direction restricting his discharge [<sup>F7</sup>or a person liable to be detained under][<sup>F5</sup>section 38 of the said Act of 1983];

“place of safety” has the same meaning as in [<sup>F5</sup>Part III of the said Act of 1983] or Part III of the said Act of 1961 or section 462 of this Act, as the case may be;

“Prison Act” means the <sup>M11</sup>Prison Act 1952, the <sup>M12</sup>Prisons (Scotland) Act 1952 or the <sup>M13</sup>Prison Act (Northern Ireland) 1953, as the case may be.

#### Textual Amendments

- F1** Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), s. 148, **Sch. 4 para. 41(a)**
- F2** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(1), **Sch. 3 para. 23(a)**
- F3** Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), s. 148, **Sch. 4 para. 41(b)**
- F4** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(1), **Sch. 3 para. 23(b)**
- F5** Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), s. 148, **Sch. 4 para. 41(c)**
- F6** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(1), **Sch. 3 para. 23(c)**
- F7** Words inserted by [Mental Health \(Amendment\) Act 1982 \(c. 51, SIF 85\)](#), Sch. 3 para. 50(b), **Sch. 5 para. 1**

#### Marginal Citations

- M2** [1983 c. 20\(85\)](#).
- M3** [1984 c. 36\(85\)](#).
- M4** [1961 c. 15 \(N.I.\)](#)
- M5** [1983 c. 20\(85\)](#).
- M6** [1984 c. 36\(85\)](#).
- M7** [1961 c. 15 \(N.I.\)](#)
- M8** [1983 c. 20\(85\)](#).
- M9** [1984 c. 36\(85\)](#).
- M10** [1961 c. 15 \(N.I.\)](#)
- M11** [1952 c. 52\(39:1\)](#).
- M12** [1952 c. 61\(39:1\)](#).
- M13** [1953 c. 18 \(N.I.\)](#)

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## 14 Warrant to search for or remove a child.

- (1) If, on an application to a justice by any person who, in the opinion of the justice, is acting in the interests of a child, it appears to the justice on information on oath that there is reasonable cause to suspect—
  - (a) that the child has been or is being assaulted, ill-treated, or neglected in any place within the jurisdiction of the justice, in a manner likely to cause him unnecessary suffering or injury to health, or
  - (b) that any offence mentioned in Schedule 1 to this Act has been or is being committed in respect of the child,the justice may issue a warrant authorising any constable named therein to search for the child and, if it is found that he has been or is being assaulted, ill-treated or neglected in manner aforesaid, or that any such offence as aforesaid has been or is being committed in respect of him, to take him to and detain him in a place of safety, or authorising any constable to remove him with or without search to a place of safety and detain him there.
- (2) A child shall not continue to be detained under the last foregoing subsection—
  - (a) where the reporter considers the child does not require compulsory measures of care, or
  - (b) after the day on which a children's hearing first sit to consider his case in pursuance of section 37(4) of the <sup>M14</sup>Social Work (Scotland) Act 1968, or
  - (c) for a period exceeding seven days.
- (3) A justice issuing a warrant under this section may by the same warrant cause any person accused of any offence in respect of the child to be apprehended and brought before the sheriff, and proceedings to be taken against him according to law.
- (4) Any constable authorised by warrant under this section to search for or, with or without search, to remove any child may enter (if need be by force) any house, building, or other place specified in the warrant, and may remove him therefrom.
- (5) Every warrant issued under this section shall be addressed to and executed by a constable, who shall be accompanied by the person making the application if that person so desires, unless the justice by whom the warrant is issued otherwise directs, and may also, if the justice by whom the warrant is issued so directs, be accompanied by a duly qualified medical practitioner.
- (6) It shall not be necessary in any application, information or warrant under this section to name the child.

### Modifications etc. (not altering text)

**C1** S. 14 amended by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), [s. 37\(1\)](#) and [Foster Children \(Scotland\) Act 1984 \(c. 56, SIF 20\)](#), [s. 13](#)

### Marginal Citations

**M14** 1968 c. 49(81:3).

## 15 Sheriff's warrant may be executed out of district.

- (1) Any warrant granted by a sheriff against—

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- (a) a person charged with having committed a crime or offence within the jurisdiction of that sheriff; or
  - (b) a person as being in *meditatione fugae*,
- shall be sufficient for the apprehension of that person within any other sheriff court district, and for conveying and disposing of him in terms of the warrant, without the necessity of its being backed or endorsed by any other justice.

(2) Such warrant may be executed throughout Scotland in like manner as it may be executed within the jurisdiction of the sheriff who granted the warrant.

**15 Sheriff’s warrant may be executed out of district. S**

- (1) Any warrant granted by a sheriff against—
- (a) a person charged with having committed a crime or offence within the jurisdiction of that sheriff; or
  - (b) a person as being in *meditatione fugae*,
- shall be sufficient for the apprehension of that person within any other sheriff court district, and for conveying and disposing of him in terms of the warrant, without the necessity of its being backed or endorsed by any other justice.

(2) Such warrant may be executed throughout Scotland in like manner as it may be executed within the jurisdiction of the sheriff who granted the warrant.

**15A Warrants for search and apprehension to be signed by judge.**

Any warrant for search or apprehension granted under this Part of this Act shall be signed by the judge granting it, and execution upon any such warrant may proceed either upon the warrant itself or upon an extract of the warrant issued and signed by the clerk of court.

**16 Backing of certain warrants from the Isle of Man.**

- (1) A warrant issued in the Isle of Man for the arrest of a person charged with an offence may, after it has been endorsed by a justice in Scotland, be executed there by the person bringing that warrant, by any person to whom the warrant was originally directed or by any officer of law of the sheriff court district where the warrant has been endorsed as aforesaid in like manner as any such warrant issued in Scotland.
- (2) In this section “endorsed” means endorsed in the like manner as a process to which section 4 of the <sup>M15</sup>Summary Jurisdiction (Process) Act 1881 applies.

<p><b>Marginal Citations</b> M15 1881 c. 24(36:3).</p>
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#### Textual Amendments

**F9** S. 17 repealed by [Criminal Law Act 1977 \(c. 45, SIF 39:1\)](#), [Sch. 13](#)

### 18 Power of constable to take offenders into custody.

- (1) Without prejudice to any other powers of arrest, any constable may take into custody, without warrant—
  - (a) any person who within his view commits any of the offences mentioned in Schedule 1 to this Act, if the constable does not know and cannot ascertain his name and address;
  - (b) any person who has committed, or whom he has reason to believe to have committed, any of the offences mentioned in Schedule 1 to this Act, if the constable does not know and cannot ascertain his name and address or has reasonable ground for believing that he will abscond.
- [<sup>F10</sup>(2) Where a person has been arrested under this section, the officer in charge of a police station may—
  - (a) liberate him upon a written undertaking, signed by him and certified by the said officer, in terms of which that person undertakes to appear at a specified court at a specified time; or
  - (b) liberate him without any such undertaking; or
  - (c) refuse to liberate him; and such refusal and the detention of that person until his case is tried in the usual form shall not subject the officer to any claim whatsoever.
- (3) A person in breach of an undertaking given by him under subsection (2)(a) above without reasonable excuse shall be guilty of an offence and liable to the following penalties—
  - (a) a fine not exceeding £200; and
  - (b) imprisonment for a period not exceeding 3 months.
- (4) The penalties provided for in subsection (3) above may be imposed in addition to any other penalty which it is competent for the court to impose, notwithstanding that the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.
- (5) In any proceedings relating to an offence under this section, a writing, purporting to be such an undertaking as is mentioned in subsection (2)(a) above and bearing to be signed and certified, shall be sufficient evidence of the terms of the undertaking given by the arrested person.]

#### Textual Amendments

**F10** S. 18(2)–(5) substituted for s. 18(2) by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), [s. 7\(1\)](#)

### 19 Prisoners before examination to have access to solicitor.

- (1) Where any person has been arrested on any criminal charge, such person shall be entitled immediately upon such arrest

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- [<sup>F11</sup>(a)] to have intimation sent to a solicitor that his professional assistance is required by such person, and informing him of the place to which such person is to be taken for examination;
- [<sup>F12</sup>(b)] to be told what rights there are under paragraph (a) above and subsections (2) and (3) below.]
- (2) Such solicitor shall be entitled to have a private interview with the person accused before he is examined on declaration, and to be present at such examination.
- (3) It shall be in the power of the sheriff or justice to delay such examination for a period not exceeding 48 hours from and after the time of such person's arrest, in order to allow time for the attendance of such solicitor.

#### Textual Amendments

- F11** Word inserted by virtue of [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 25](#)
- F12** [S. 19\(1\)\(b\)](#) inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 6 para. 1](#), [Sch. 7 para. 25](#)

## 20 Accused at examination need not emit a declaration.

- (1) Where the accused is brought before the sheriff for examination on any charge and he or his solicitor intimates that he does not desire to emit a declaration in regard to such charge, it shall be unnecessary to take a declaration, and [<sup>F13</sup>subject to section 20A of this Act] the accused may be committed for further examination or until liberated in due course of law without a declaration being taken.
- (2) Where the accused does not desire to emit a declaration as aforesaid, that fact shall be recorded in the warrant of committal.
- (3) The foregoing provisions of this section shall not prejudice the right of the accused subsequently to emit a declaration on intimating to the prosecutor his desire to do so [<sup>F14</sup>; and that declaration shall be taken in further examination.]
- [<sup>F15</sup>(3A) An accused person may, where subsequent to examination (or further examination) on any charge the prosecutor desires to question him as regards an extrajudicial confession (whether or not a full admission) allegedly made by him, to or in the hearing of an officer of police, which is relevant to the charge and as regards which he has not previously been examined, be brought before the sheriff for further examination.
- (3B) Where the accused is brought before the sheriff for further examination it shall be in the power of the sheriff to delay that examination for a period not exceeding 24 hours in order to allow time for the attendance of the accused's solicitor.
- (3C) Any proceedings before the sheriff in examination or further examination shall be conducted in chambers and outwith the presence of any co-accused.]
- (4) The provisions of this section shall apply to procedure under indictment, without prejudice to the accused being tried summarily by the sheriff for any offence in respect of which he has been committed until liberated in due course of law.

#### Textual Amendments

- F13** Words inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [s. 6\(1\)\(a\)](#), [Sch. 6 para. 1](#)



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- F14** Words added by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 6(1)(b), [Sch. 6 para. 1](#)  
**F15** [S. 20\(3A\)–\(3C\)](#) inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 6(1)(c), [Sch. 6 para. 1](#)

**[<sup>F16</sup>20A Accused at examination may be questioned by prosecutor.**

- (1) Subject to the following provisions of this section, an accused on being brought before the sheriff for examination on any charge (whether that examination is the first examination or a further examination) may be questioned by the prosecutor in so far as such questioning is directed towards eliciting any denial, explanation, justification or comment which the accused may have as regards—
- (a) matters averred in the charge:

Provided that the particular aims of a line of questions under this paragraph shall be to determine—

- (i) whether any account which the accused can give ostensibly discloses a category of defence (as for example alibi, incrimination, or the consent of an alleged victim); and
- (ii) the nature and particulars of that defence;
- (b) the alleged making by the accused, to or in the hearing of an officer of police, of an extrajudicial confession (whether or not a full admission) relevant to the charge:

Provided that questions under this paragraph may only be put if the accused has, before the examination, received from the prosecutor or from an officer of police a written record of the confession allegedly made; or

- (c) what is said in any declaration emitted in regard to the charge by the accused at the examination.
- (2) The prosecutor shall, in framing questions in exercise of his power under subsection (1) above, have regard to the following principles—
- (a) the questions should not be designed to challenge the truth of anything said by the accused;
- (b) there should be no reiteration of a question which the accused has refused to answer at the examination; and
- (c) there should be no leading questions;
- and the sheriff shall ensure that all questions are fairly put to, and understood by, the accused.
- (3) The accused, where he is represented by a solicitor at the judicial examination, shall be told by the sheriff that he may consult that solicitor before answering any question.
- (4) With the permission of the sheriff, the solicitor for the accused may ask the accused any question the purpose of which is to clarify any ambiguity in an answer given by the accused to the prosecutor at the examination or to give the accused an opportunity to answer any question which he has previously refused to answer.
- (5) An accused may decline to answer a question under subsection (1) above; and, where he is subsequently tried on the charge mentioned in that subsection or on any other charge arising out of the circumstances which gave rise to the charge so mentioned, his having so declined may be commented upon by the prosecutor, the judge presiding at the trial, or any co-accused, only where and in so far as the accused (or any witness

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called on his behalf) in evidence avers something which could have been stated appropriately in answer to that question.

- (6) The procedure in relation to examination under this section shall be prescribed by Act of Adjournal under this Act.]

#### Textual Amendments

**F16** Ss. 20A, 20B inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 6(2), Sch. 6 para. 1

### 20B Record to be made of proceedings at examination.

- (1) The prosecutor shall provide for *verbatim* record to be made by a shorthand writer of all questions to and answers and declarations by, the accused in examination, or further examination, under sections 20 and 20A of this Act.
- (2) The shorthand writer shall sign the transcript of the notes taken by him and shall certify that it is a complete and accurate record of the said questions, answers and declarations; and, subject to subsection (4) below, it shall for all purposes be so deemed.
- (3) Subject to subsections (5) and (6) below, within 14 days of the date of examination or further examination, the prosecutor shall—
  - (a) serve a copy of the transcript on the accused examined; and
  - (b) serve a further such copy on the solicitor (if any) for that accused.
- (4) Subject to subsections (5) and (6) below, where notwithstanding the certification mentioned in subsection (2) above the said accused or the prosecutor is of the opinion that a transcript served under paragraph (a) of subsection (3) above contains an error or is incomplete he may—
  - (a) within 10 days of service under the said paragraph (a), serve notice of such opinion on the prosecutor or as the case may be the said accused; and
  - (b) within 14 days of service under paragraph (a) of this subsection, apply to the sheriff for the error or incompleteness to be rectified;
 and the sheriff shall within seven days of the application hear the prosecutor and the said accused in chambers and may authorise rectification:

Provided that where—

- (i) the person on whom notice is served under paragraph (a) of this subsection agrees with the opinion to which that notice relates the sheriff may dispense with such hearing;
  - (ii) the said accused neither attends, nor secures that he is represented at, such hearing it shall, subject to paragraph (i) above, nevertheless proceed.
- (5) Where at the time of a further examination a trial diet is already fixed and the interval between the further examination and that diet is not sufficient to allow of the time limits specified in subsections (3) and (4) above, the sheriff shall (either or both)—
- (a) direct that those subsections shall apply in the case with such modifications as to time limits as he shall specify;
  - (b) postpone the trial diet:

Provided that postponement under paragraph (b) above alone shall only be competent where the sheriff considers that to proceed under paragraph (a) above alone, or paragraphs (a) and (b) above together, would not be practicable.



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- (6) Any time limit mentioned in subsections (3) and (4) above (including any such time limit as modified by a direction under subsection (5) above) may be extended, in respect of the case, by the High Court.
- (7) In so far as it is reasonably practicable so to arrange, the sheriff who deals with any application made under subsection (4) above shall be the sheriff before whom the examination (or further examination) to which the application relates was conducted.
- (8) Any decision of the sheriff, as regards rectification under subsection (4) above, shall be final.
- (9) A copy of—
  - (a) a transcript required by paragraph (a) of subsection (3) above to be served on an accused or by paragraph (b) of that subsection to be served on his solicitor; or
  - (b) a notice required by paragraph (a) of subsection (4) above to be served on an accused or on the prosecutor,may either be personally served on the accused, solicitor or prosecutor (as the case may be) or sent to him by registered post or by the recorded delivery service; and a written execution purporting to be signed by the person who served such transcript or notice, together with, where appropriate, a post office receipt for the relative registered or recorded delivery letter shall be sufficient evidence of service of such a copy.

## **21 Examination of accused on charges arising in different districts.**

Where there are charges against the accused in different sheriff court districts he may be brought before the sheriff of any one of such districts at the instance of the procurator fiscal of such district for examination on all or any of such charges, and may be dealt with in every respect as if such charges had arisen in the district where he is examined, but without prejudice to the power of the Lord Advocate under section 5 of this Act to determine the court before which the accused shall be tried on such charges.

## **22 Committal until liberation in due course of law.**

- (1) All informations shall be signed and no person shall be committed until liberated in due course of law for any crime or offence without a warrant in writing expressing the particular charge in respect of which he is committed.
- (2) Any such warrant for imprisonment which either proceeds on an unsigned information or does not express the particular charge shall be null and void.
- (3) The accused person shall immediately be given a true copy of the warrant for imprisonment signed by the messenger or executor of the warrant before imprisonment or the warder of the prison receiving the warrant.

## **23 Remand and committal of persons under 21.**

- (1) Where a court remands or commits for trial or for sentence a person under 21 years of age who is charged with or convicted of an offence and is not released on bail, then, except as otherwise expressly provided by this section, the following provisions shall have effect, that is to say—
  - (a) subject to the following paragraph, if he is under 16 years of age the court shall commit him to the local authority in whose area the court is situated, and

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- the authority shall have the duty of placing him in a suitable place of safety chosen by the authority instead of committing him to prison;
- (b) if he is a person of over 16 years of age, or a child under 16 years of age but over 14 years of age who is certified by the court to be unruly or depraved, and the court has been notified by the Secretary of State that a remand centre is available for the reception from that court of persons of his class or description, he shall be committed to a remand centre instead of being committed to prison.
- (2) Where any person is committed to a local authority or to a remand centre under any provision of this Act, that authority or centre shall be specified in the warrant, and he shall be detained by the authority or in the centre for the period for which he is committed or until he is liberated in due course of law.
- (3) Where any person has been committed to a local authority under any provision of this Act, the court by which he was committed, if the person so committed is not less than 14 years of age and it appears to the court that he is unruly or depraved, may revoke the commitment and commit the said person—
- (a) if the court has been notified that a remand centre is available for the reception from that court of persons of his class or description, to a remand centre; and
- (b) if the court has not been so notified, to a prison.
- (4) Where, in the case of a person under 16 years of age who has been committed to prison or to a remand centre under this section, the sheriff is satisfied that his detention in prison or a remand centre is no longer necessary, he may revoke the commitment and commit the person to the local authority in whose area the court is situated, and the authority shall have the duty of placing him in a suitable place of safety.

#### Commencement Information

**II** S. 23 wholly in force at 6.1.1992; see s. 464(3) and S.I. 1991/2883, art. 2

## 24 Committal of children to custody in place of safety.

- (1) Any court, on remanding or committing for trial a child who is not liberated on bail shall, instead of committing him to prison, commit him to the local authority in whose area the court is situated to be detained in a place of safety chosen by the local authority for the period for which he is remanded or until he is liberated in due course of law.

Provided that in the case of a child over 14 years of age it shall not be obligatory on the court so to commit him if the court certifies that he is of so unruly a character that he cannot safely be so committed or that he is of so depraved a character that he is not a fit person to be so detained <sup>[F17]</sup>; but the court shall not so certify a child unless such conditions as the Secretary of State may by order made by statutory instrument prescribe are satisfied in relation to the child.]

- (2) A commitment under this section may be varied, or, in the case of a child over 14 years of age, who proves to be of so unruly a character that he cannot safely be detained in such custody, or to be of so depraved a character that he is not a fit person to be so detained, revoked, by the court which made the order, or if application cannot conveniently be made to that court, by a sheriff sitting summarily having jurisdiction in the place where the court which made the order sat, and if it is revoked the child may be committed to prison <sup>[F18]</sup>; but a commitment shall not be so revoked unless conditions

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as the Secretary of State may by order made by statutory instrument prescribe are satisfied in relation to the child.]

#### Textual Amendments

- F17** Words added (*prosp.*) by [Children Act 1975 \(c. 72, SIF 42:9, 10\)](#), **ss. 70(a)**, 108(2)  
**F18** Words added (*prosp.*) by [Children Act 1975 \(c. 72, SIF 42:9, 10\)](#), **ss. 70(b)**, 108(2)

## 25 Power of court to commit to hospital a person suffering from mental disorder.

- (1) Where a court remands or commits for trial a person charged with any offence who appears to the court to be suffering from mental disorder, and the court is satisfied that a hospital is available for his admission and suitable for his detention, the court may, instead of remanding him in custody, commit him to that hospital.
- (2) Where any person is committed to a hospital as aforesaid, the hospital shall be specified in the warrant and, if the responsible medical officer is satisfied that he is suffering from mental disorder of a nature or degree which warrants his admission to a hospital under [<sup>F19</sup>Part V of the <sup>M16</sup>Mental Health (Scotland) Act 1984], he shall there be detained for the period for which he is remanded or the period of committal, unless before the expiration of that period he is liberated in due course of law.
- (3) When the responsible medical officer has examined the person so detained he shall report the result of that examination to the court and, where the report is to the effect that the person is not suffering from mental disorder of such a nature or degree as aforesaid, the court may commit him to any prison or other institution to which he might have been committed had he not been committed to hospital or may otherwise deal with him according to law.
- (4) No person shall be committed to a hospital under this section except on the written or oral evidence of a medical practitioner.

#### Textual Amendments

- F19** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(1), **Sch. 3 para. 24**

#### Marginal Citations

- M16** [1984 c. 36\(85\)](#).

## 26 Bail competent before committal.

- (1) All crimes and offences, except murder and treason, shall be bailable.
- (2) Any person accused of a crime which is by law bailable shall be entitled immediately after he has been brought before a justice for examination on declaration to apply to such justice or to the sheriff for [<sup>F20</sup>bail]:  

Provided that the prosecutor shall be entitled to be heard against any such application.
- (3) The sheriff or justice shall be entitled in his discretion to refuse such application before the person accused is committed until liberated in due course of law.

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- (4) Where an accused person is admitted to bail without being committed until liberated in due course of law, it shall not be necessary so to commit him, and it shall be lawful to serve him with an indictment or complaint without his having been previously so committed.

#### Textual Amendments

**F20** Word substituted by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), [Sch. 1 para. 3](#)

### 27 Renewal of application for bail after committal.

Where bail is refused before committal until liberation in due course of law on an application made under the last foregoing section, the application for bail may be renewed after such committal.

### 28 Admission or refusal of bail after committal.

- (1) Any sheriff having jurisdiction to try the offence or to commit the accused until liberated in due course of law may, at his discretion, on the application of any person who has been committed until liberation in due course of law for any crime or offence, except murder or treason, and after opportunity shall have been given to the prosecutor to be heard thereon, admit or refuse to admit such person to bail.
- (2) Such application shall be disposed of within 24 hours after its presentation to the sheriff, failing which the accused shall be forthwith liberated.
- [<sup>F21</sup>(3) For the avoidance of doubt, the provisions of section 26 of this Act and the foregoing provisions of this section apply whether or not the person is in custody at such time as he appears for the disposal of his application.]

#### Textual Amendments

**F21** [S. 28\(3\)](#) added by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 6 para. 1](#), [Sch. 7 para. 26](#)

### 28A No bail for persons charged with or convicted of homicide or rape after previous conviction of such offences.

- (1) Notwithstanding sections 26 to 33 and 238 of this Act, a person who in any proceedings has been charged with or convicted of—
- (a) attempted murder;
  - (b) culpable homicide;
  - (c) rape; or
  - (d) attempted rape,
- in circumstances where this section applies shall not be granted bail in those proceedings.
- (2) This section applies where—

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- (a) the person has previously been convicted by or before a court in any part of the United Kingdom of any offence specified in subsection (1) above or of murder or manslaughter; and
  - (b) in the case of a previous conviction of culpable homicide or of manslaughter—
    - (i) he was sentenced to imprisonment or, if he was then a child or young person, to detention under any of the relevant enactments;
    - (ii) a hospital order was imposed in respect of him;
    - (iii) an order having the same effect as a hospital order was made in respect of him under section 174ZC(2)(a) of this Act; or
    - (iv) an order having equivalent effect to an order referred to in subparagraph (ii) or (iii) above has been made in respect of him by a court in England and Wales.
- (3) This section applies whether or not an appeal is pending against conviction or sentence or both.
- (4) In this section—  
“conviction” includes—
  - (a) a finding that a person is not guilty by reason of insanity;
  - (b) a finding under section 174ZA(2) of this Act;
  - (c) a finding under section 4A(3) of the Criminal Procedure (Insanity) Act 1964 (cases of unfitness to plead) that a person did the act or made the omission charged against him; and
  - (d) a conviction of an offence for which an order is made placing the offender on probation or discharging him absolutely or conditionally;and “convicted” shall be construed accordingly; and  
“the relevant enactments” means—
  - (a) as respects Scotland, sections 205 and 206 of this Act;
  - (b) as respects England and Wales, section 53(2) of the Children and Young Persons Act 1933; and
  - (c) as respects Northern Ireland, section 73(2) of the Children and Young Persons Act (Northern Ireland) 1968.

29 ..... F23

**Textual Amendments**

**F23** Ss. 29, 30(5), 34, 36 repealed by *Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1)*, **Sch. 2**

**30 Application for review of court’s decision on bail and caution.**

- (1) The following provisions of this section shall apply where a court has refused to admit a person to bail or, where a court has so admitted a person, the bail fixed in his case has not been found.
- (2) A court shall, on the application of any such person as aforesaid, have power to review its decision to admit to bail or its decision as to the bail fixed and may, on cause shown, admit the person to bail or, as the case may be, fix bail [<sup>F24</sup>on different conditions].

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- (3) An application under this section, where it relates to the original decision of the court, shall not be made before the fifth day after that decision and, where it relates to a subsequent decision, before the fifteenth day thereafter.
- (4) Nothing in the provisions of this section shall affect any right of a person to appeal against the decision of a court in relation to admitting to bail or to the bail fixed.
- (5) . . . . . F25

**Textual Amendments**

**F24** Words substituted by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), **Sch. 1 para. 4**

**F25** [Ss. 29, 30\(5\), 34, 36](#) repealed by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), **Sch. 2**

**30A Application by prosecutor for review of court’s decision to grant bail.**

- (1) On an application by the prosecutor at any time after a court has granted bail to a person the court may, where the prosecutor puts before the court material information which was not available to it when it granted bail to that person, review its decision.
- (2) On receipt of an application under subsection (1) above the court shall—
  - (a) intimate the application to the person granted bail;
  - (b) fix a diet for hearing the application and cite that person to attend the diet; and
  - (c) where it considers that the interests of justice so require, grant warrant to arrest that person.
- (3) On hearing an application under subsection (1) above the court may—
  - (a) withdraw the grant of bail and remand the person in question in custody; or
  - (b) grant bail, or continue the grant of bail, either on the same or on different conditions.
- (4) Nothing in the foregoing provisions of this section shall affect any right of appeal against the decision of a court in relation to bail.

**31 Appeal in respect of bail.**

- (1) Where an application for bail after commitment until liberation in due course of law is refused by any sheriff, or where the applicant is dissatisfied with the amount of bail fixed, he may appeal to the High Court, and the High Court may, in its discretion, order intimation to the Lord Advocate.
- (2) Where an application for bail is granted by any sheriff, whether before or after commitment until liberation in due course of law, the public prosecutor, if dissatisfied with the decision allowing bail, or with the amount of bail fixed, may appeal to the High Court, and the applicant shall not be liberated until the appeal by the prosecutor is disposed of, except as provided in section 33 of this Act.
- (3) Written notice of appeal shall be immediately given to the opposite party by the party appealing under this section.
- (4) An appeal under this section shall be disposed of by the High Court or any Lord Commissioner of Justiciary in court or in chambers after such inquiry and hearing of parties as shall seem just.



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(5) In the event of the appeal of the public prosecutor under this section being refused, the court may award expenses against him.

**32 No fees exigible against accused in respect of application for bail.**

No clerks' fees, court fees, or other fees or expenses shall be exigible from, or be awarded against, an accused in respect of his application for bail, or of the appeal of such application to the High Court.

**33 Liberation of applicant when appeal by public prosecutor.**

- (1) When an appeal is taken by the public prosecutor either against the grant of bail or against the amount fixed, the applicant to whom bail has been granted shall, if the bail fixed shall have been found by him, be liberated after 72 hours, or where the place of application is in the Outer Hebrides, or in Orkney or Zetland, 96 hours from the granting of the application, whether the appeal be disposed of or not, unless the High Court shall grant an order for his further detention in custody. In computing the aforesaid periods, Sundays and public holidays, whether general or court holidays, shall be excluded.
- (2) Notice by telegraph to the governor of the prison of the issue of such an order within the time aforesaid bearing to be sent by the Clerk of Justiciary or the Crown Agent shall be sufficient warrant for the detention of the applicant pending arrival of the order in due course of post.

34 ..... F27

**Textual Amendments**

F27 Ss. 29, 30(5), 34, 36 repealed by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), [Sch. 2](#)

**35 Right of Lord Advocate and High Court to admit a person to bail.**

Nothing contained in this Act shall affect the right of the Lord Advocate or the High Court to admit to bail any person charged with any crime or offence.

36 ..... F28

**Textual Amendments**

F28 Ss. 29, 30(5), 34, 36 repealed by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), [Sch. 2](#)

**37 Power to order parent to give security for child's good behaviour.**

- (1) Where a child has been charged with any offence, the court may order his parent or guardian to give security for his co-operation in securing the child's good behaviour.

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- (2) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.
- (3) Any sums ordered on forfeiture of any such security as aforesaid to be paid by a parent or guardian may be recovered from him by civil diligence or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child was charged.

### **38 Separation of children from adults at courts, etc.**

Arrangements shall be made for preventing a child while detained in a police station, or while being conveyed to or from any criminal court, or while waiting before or after attendance in any criminal court, from associating with an adult (not being a relative) who is charged with any offence other than an offence with which the child is jointly charged, and for ensuring that a female child shall, while so detained, being conveyed, or waiting, be under the care of a woman.

### **39 Attendance at court of parent of child charged with an offence, etc.**

- (1) Where a child is charged with any offence, his parent or guardian may in any case, and shall, if he can be found and resides within a reasonable distance, be required to attend at the court before which the case is heard or determined during all the stages of the proceedings, unless the court is satisfied that it would be unreasonable to require his attendance.
- (2) Where the child is arrested, the constable by whom he is arrested or the officer of police in charge of the police station to which he is brought shall cause the parent or guardian of the child, if he can be found, to be warned to attend at the court before which the child will appear.
- (3) For the purpose of enforcing the attendance of a parent or guardian and enabling him to take part in the proceedings and enabling orders to be made against him, rules may be made under section 457 of this Act, for applying, with the necessary adaptations and modifications, such of the provisions of Part II of this Act as appear appropriate for the purpose.
- (4) The parent or guardian whose attendance shall be required under this section shall be the parent or guardian having the actual possession and control of the child:  
  
Provided that, if that person is not the father, the attendance of the father may also be required.
- (5) The attendance of the parent of a child shall not be required under this section in any case where the child was before the institution of the proceedings removed from the custody or charge of his parent by an order of a court.

### **40 Notice to local authority of charge against a child.**

- (1) Where a child is to be brought before a court, notification of the day and hour when, and the nature of the charge on which, the child is to be so brought shall be sent by the chief constable of the area in which the offence is alleged to have been committed to the local authority for the area in which the court will sit.

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- (2) Where a local authority have received a notification under the foregoing subsection they shall make such investigations and render to the court a report which shall contain such information as to the home surroundings of the child as appear to them will assist the court in the disposal of his case, and the report shall contain information, which the appropriate education authority shall have a duty to supply, as to the school record, health and character of the child.

**Status:**

Point in time view as at 18/09/1993.

**Changes to legislation:**

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