



Criminal Justice (Scotland) Act 1987

1987 CHAPTER 41

PART II

MISCELLANEOUS

Detention by customs officers

48 Detention and questioning by customs officers

- (1) Where an officer has reasonable grounds for suspecting that a person has committed or is committing an offence punishable by imprisonment relating to an assigned matter, the officer may, for the purpose of facilitating the carrying out of investigations—
 - (a) into the offence; and
 - (b) as to whether criminal proceedings should be instigated against the person,detain that person and take him as quickly as is reasonably practicable to a customs office or other premises and, subject to the following provisions of this section, the detention may continue there.
- (2) Detention under subsection (1) above shall be terminated not more than six hours after it begins or (if earlier)—
 - (a) when the person is arrested;
 - (b) when he is detained in pursuance of any other enactment or subordinate instrument; or
 - (c) where there are no longer such grounds as are mentioned in the said subsection (1),and when a person has been detained under subsection (1) above, he shall be informed immediately upon the termination of his detention in accordance with this subsection that his detention has been terminated.
- (3) Where a person has been released at the termination of a period of detention under subsection (1) above he shall not thereafter be detained, under that subsection, on the same grounds or on any grounds arising out of the same circumstances.

Status: This is the original version (as it was originally enacted).

- (4) Where a person has previously been detained in pursuance of any other enactment or subordinate instrument, he may not be detained under subsection (1) above on the same grounds or on grounds arising from the same circumstances as those which led to his earlier detention.
- (5) At the time when an officer detains a person under subsection (1) above, he shall inform the person of his suspicion, of the general nature of the offence which he suspects has been or is being committed and of the reason for the detention; and there shall be recorded—
- (a) the place where detention begins and the customs office or other premises to which the person is taken;
 - (b) the general nature of the suspected offence;
 - (c) the time when detention under subsection (1) above begins and the time of the person's arrival at the customs office or other premises;
 - (d) the time when the person is informed of his rights in terms of subsection (8) below and of section 49(1) of this Act and the identity of the officer so informing him;
 - (e) where the person requests such intimation to be sent as is specified in section 49(1) of this Act, the time when such request is—
 - (i) made;
 - (ii) complied with; and
 - (f) the time of the person's departure from the customs office or other premises or, where instead of being released he is—
 - (i) further detained under section 50 of this Act, the time of commencement of the further detention; or
 - (ii) arrested in respect of the alleged offence, the time of such arrest.
- (6) Where a person is detained under subsection (1) above, an officer may—
- (a) without prejudice to any existing rule of law as regards the admissibility in evidence of any answer given, put questions to him in relation to the suspected offence;
 - (b) exercise the same powers of search as are available following an arrest.
- (7) An officer may use reasonable force in exercising any power conferred by subsection (1) or (6)(b) above.
- (8) A person detained under subsection (1) above shall be under no obligation to answer any question other than to give his name and address, and an officer shall so inform him both on so detaining him and on arrival at the customs office or other premises.
- (9) In this section and in sections 49 and 50 of this Act "assigned matter" and "officer" have the meanings given to them by section 1 of the Customs and Excise Management Act 1979, and "customs office" means a place for the time being occupied by Her Majesty's Customs and Excise.

49 Right to have someone informed when detained

- (1) Without prejudice to section 19 or 305 of the 1975 Act (intimation to solicitor following arrest), a person who, not being a person in respect of whose detention subsection (2) below applies, is being detained under section 48 of this Act at a customs office or other premises shall be entitled to have intimation of his detention and of the place where he is being detained sent to a solicitor and to one other

person reasonably named by him without delay or, where some delay is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders, with no more delay than is so necessary; and the person shall be informed of such entitlement—

- (a) on arrival at the customs office or other premises; or
- (b) where he is not detained until after such arrival, on such detention.

(2) Without prejudice to the said section 19 or 305, an officer shall, where a person who is being detained as is mentioned in subsection (1) above appears to him to be a child, send without delay such intimation as is mentioned in that subsection to that person's parent if known; and the parent—

- (a) in a case where there is reasonable cause to suspect that he has been involved in the alleged offence in respect of which the person has been detained, may; and

(b) in any other case shall,

be permitted access to the person.

(3) The nature and extent of any access permitted under subsection (2) above shall be subject to any restriction essential for the furtherance of the investigation or the well-being of the person.

(4) In subsection (2) above—

(a) "child" means a person under 16 years of age; and

(b) "parent" includes a guardian and any person who has the actual custody of a child.

50 Detention in connection with certain drug smuggling offences

(1) Where an officer has reasonable grounds for suspecting—

- (a) that a person has committed or is committing a relevant offence; and
- (b) that, in connection with the commission of such an offence, a controlled drug is secreted in the person's body,

a superior officer may, notwithstanding that the person has been or is being detained in pursuance of any other enactment or subordinate instrument, authorise the detention of the person at a customs office or other premises in accordance with this section.

(2) Subject to subsection (7) below, where a person is detained under subsection (1) above or is further detained in pursuance of a warrant under subsection (4) below he shall—

- (a) provide such specimens of blood or urine for analysis;
- (b) submit to such intimate searches, to be carried out by a registered medical practitioner;
- (c) submit to such other tests or examinations prescribed by the Secretary of State by regulations made under this paragraph to be carried out by, or under the supervision of, a registered medical practitioner,

as the officer may reasonably require; and regulations under paragraph (c) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Subject to subsection (4) below, detention under subsection (1) above shall be terminated not more than 24 hours after it begins, or (if earlier)—

- (a) when the person is arrested;

Status: This is the original version (as it was originally enacted).

- (b) when he is detained in pursuance of any other enactment or subordinate instrument; or
 - (c) where there are no longer such grounds as are mentioned in subsection (1),and, when a person has been detained under subsection (1), he shall, unless further detained in pursuance of a warrant under subsection (4) below, be informed immediately upon the termination of his detention in accordance with this subsection that his detention has been terminated.
- (4) Where a person is detained under subsection (1) above and either—
 - (a) he has failed or refused—
 - (i) to provide a specimen in pursuance of paragraph (a) of subsection (2) above; or
 - (ii) to submit to any search, test or examination referred to in paragraph (b) or (c) of that subsection; or
 - (b) as a result of anything done in pursuance of the said subsection (2) the officer continues to have reasonable grounds for suspecting—
 - (i) that the person has committed or is committing a relevant offence; and
 - (ii) that a controlled drug is secreted in the person's body,the procurator fiscal may, at the request of a superior officer, apply to the sheriff for a warrant for the further detention of the person at a customs office or other premises for an additional period of not more than 7 days; and if the sheriff is satisfied that there has been such failure or refusal as is mentioned in paragraph (a) above or, as the case may be, that there are reasonable grounds as mentioned in paragraph (b) above he may grant a warrant for such further detention.
- (5) Detention in pursuance of a warrant under subsection (4) above shall be terminated at the end of the period of 7 days mentioned in that subsection or (if earlier)—
 - (a) when the person is arrested;
 - (b) when he is detained in pursuance of any other enactment or subordinate instrument; or
 - (c) where there are no longer such grounds as are mentioned in paragraph (b) of that subsection,and when a person has been detained in pursuance of a warrant under subsection (4), he shall be informed immediately on the termination of his detention in accordance with this subsection that his detention has been terminated.
- (6) Subject to subsection (7) below, the question whether it is to be a specimen of blood or a specimen of urine which is to be provided in pursuance of subsection (2) above shall be decided by the officer making the requirement.
- (7) A person may be required, in pursuance of subsection (2) above—
 - (a) to provide a specimen of blood; or
 - (b) to submit to any search, test or examination,only if a registered medical practitioner is of the opinion that there are no medical reasons for not making such a requirement; and, if a requirement to provide a specimen of blood is made, the specimen may be taken only by a registered medical practitioner.
- (8) Subsections (3), (5), (6) and (8) of section 48 of this Act shall apply in respect of a person detained under this section as they apply in respect of a person detained under

Status: This is the original version (as it was originally enacted).

the said section 48; and, except as regards a requirement under subsection (2) above, an officer may use reasonable force in exercising any power conferred by this section.

(9) Section 49 of this Act shall, subject to the following modifications, apply in respect of a person detained under this section as it applies to a person detained under section 48 of this Act—

- (a) any delay in informing a solicitor and one other person of such detention as is mentioned in subsection (1) of the said section 49 shall not extend longer than the period of 24 hours from the start of the detention, and shall only be permitted on the authorisation of a superior officer;
- (b) the person detained shall be entitled to consult a solicitor at any time without delay, and he shall be informed of such entitlement at the commencement of the detention; but, if a superior officer considers it necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders, he may authorise a delay not extending longer than the period of 24 hours from the start of the detention; and
- (c) paragraph (a) of subsection (2) of the said section 49 shall cease to apply at the end of the period of 24 hours from the start of the detention,

but any delay authorised by virtue of this subsection shall be for no longer than is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders.

(10) Without prejudice to section 20(2) of the Interpretation Act 1978, the references in section 48(5) of this Act to section 49(1) of this Act shall be construed as including references to subsection (9) above; and the requirement to record certain matters under the said section 48(5) shall include a requirement to record the time when a person detained makes a request to consult a solicitor and the time when the solicitor is contacted for the purpose of arranging a consultation.

(11) In this section—

"intimate search" means a search which consists of the physical examination of a person's body orifices;

"relevant offence" means an offence involving a controlled drug under any of the following provisions of the Customs and Excise Management Act 1979—

- (a) section 50(2) or (3) (importation etc. of prohibited goods);
- (b) section 68(2) (exportation etc. of prohibited goods);
- (c) section 170(1) (possessing or dealing with prohibited goods);
- (d) section 170(2) (being concerned in evasion or attempt at evasion of a prohibition);

"superior officer" means an officer of the grade of senior executive officer or above.

Investigation of serious or complex fraud

51 Lord Advocate's direction

(1) Where it appears to the Lord Advocate—

- (a) that a suspected offence may involve serious or complex fraud; and
- (b) that, for the purpose of investigating the affairs or any aspect of the affairs of any person, there is good reason to do so,

he may give a direction under this section.

- (2) Where a direction is given under this section, sections 52 to 54 of this Act shall apply as regards the investigation of the offence; and any person (other than a constable) nominated by the Lord Advocate either generally or in respect of a particular case (in those sections referred to as "a nominated officer") shall be entitled to exercise the powers and functions conferred by those sections.
- (3) A direction under this section shall be signed by the Lord Advocate.

52 Powers of investigation

- (1) A nominated officer may by notice in writing require the person whose affairs are to be investigated ("the person under investigation") or any other person who he has reason to believe has relevant information to attend before a nominated officer at a specified time and place and answer questions or otherwise furnish information with respect to any matter relevant to the investigation.
- (2) A nominated officer may by notice in writing require the person under investigation or any other person to produce at a specified time and place any specified documents which appear to a nominated officer to relate to any matter relevant to the investigation or any documents of a specified class which appear to him so to relate; and—
 - (a) if any such documents are produced, a nominated officer may—
 - (i) take copies or extracts from them;
 - (ii) require the person producing them to provide an explanation of any of them;
 - (b) if any such documents are not produced, a nominated officer may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.
- (3) Where, on a petition presented by the procurator fiscal, the sheriff is satisfied, in relation to any documents, that there are reasonable grounds for believing—
 - (a) that—
 - (i) a person has failed to comply with an obligation under this section to produce them;
 - (ii) it is not practicable to serve a notice under subsection (2) above in relation to them; or
 - (iii) the service of such a notice in relation to them might seriously prejudice the investigation; and
 - (b) that they are on premises specified in the petition,he may issue such a warrant as is mentioned in subsection (4) below.
- (4) The warrant referred to in subsection (3) above is a warrant authorising a constable together with any other persons named in the warrant—
 - (a) to enter (using such force as is reasonably necessary for the purpose) and search the premises; and
 - (b) to take possession of any documents appearing to be documents of the description specified in the petition or to take in relation to any documents so appearing any other steps which may appear to be necessary for preserving them and preventing interference with them.

- (5) A statement by a person in response to a requirement imposed by virtue of this section may only be used in evidence against him in a prosecution for an offence under section 2 of the False Oaths (Scotland) Act 1933.
- (6) A person shall not under this section be required to disclose any information or produce any document which is an item subject to legal privilege within the meaning of section 40 of this Act; except that a lawyer may be required to furnish the name and address of his client.
- (7) No person shall be bound to comply with any requirement imposed by a person exercising power by virtue of a nomination under section 51(2) of this Act unless he has, if required to do so, produced evidence of his authority.
- (8) In this section—
"documents" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form; and
"premises" has the same meaning as in section 40 of this Act.
- (9) This section and sections 51 and 53 of this Act shall apply to England and Wales and Northern Ireland; and for the purposes of such application any reference—
(a) to the sheriff shall be construed as a reference to a justice of the peace; and
(b) to a petition presented by the procurator fiscal shall be construed—
(i) in England and Wales as a reference to an information laid by a nominated officer;
(ii) in Northern Ireland as a reference to a complaint laid by a nominated officer.

53 Offences in relation to investigations under section 52

- (1) Where any person—
(a) knows or suspects that an investigation under section 52 of this Act is being carried out or is likely to be carried out; and
(b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of documents which he knows or suspects or has reasonable grounds to suspect are or would be relevant to such an investigation,
he shall be guilty of an offence.
- (2) In proceedings against a person for an offence under subsection (1) above, it shall be a defence to prove—
(a) that he did not know or suspect that by acting as he did he was likely to prejudice the investigation; or
(b) that he had lawful authority or reasonable excuse for acting as he did.
- (3) A person guilty of an offence under subsection (1) above shall be liable—
(a) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both; and
(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

- (4) Any person who fails to comply with a requirement imposed on him under the said section 52 shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.
- (5) In proceedings against a person for an offence under subsection (4) above, it shall be a defence to prove that he had a reasonable excuse for acting as he did.

54 Disclosure of information

- (1) Where any information subject to an obligation of secrecy under the Taxes Management Act 1970 has been disclosed by the Commissioners of Inland Revenue or an officer of those Commissioners for the purposes of any prosecution of an offence relating to inland revenue, that information may be disclosed by the Lord Advocate for the purposes of any prosecution of an offence—
- (a) in respect of which a direction has been given under section 51(1)(a) of this Act; or
 - (b) relating to inland revenue,
- but not otherwise.
- (2) Where any information is subject to an obligation of secrecy imposed by or under any enactment other than an enactment contained in the Taxes Management Act 1970, the obligation shall not have effect to prohibit the disclosure of that information to a nominated officer but any information disclosed by virtue of this subsection may only be disclosed by the Lord Advocate for the purpose of a prosecution in Scotland or elsewhere.
- (3) Without prejudice to his power to enter into an agreement apart from this subsection, the Lord Advocate may enter into an agreement for the supply of information to or by him subject, in either case, to an obligation not to disclose the information concerned otherwise than for a specified purpose.
- (4) Subject to subsections (1) and (2) above and to any provision of an agreement for the supply of information which restricts the disclosure of the information supplied, information obtained by a nominated officer may be disclosed—
- (a) to any government department, or any Northern Ireland Department, or other authority or body discharging its functions on behalf of the Crown (including the Crown in right of Her Majesty's Government in Northern Ireland);
 - (b) to any competent authority;
 - (c) for the purposes of any prosecution in Scotland or elsewhere; and
 - (d) for the purposes of assisting any public or other authority for the time being designated for the purposes of this paragraph by an order made by the Secretary of State to discharge any functions which are specified in the order.
- (5) The following are competent authorities for the purposes of subsection (4) above—
- (a) an inspector appointed under Part XIV of the Companies Act 1985 or Part XV of the Companies (Northern Ireland) Order 1986;
 - (b) the Accountant in Bankruptcy;
 - (c) an Official Receiver;
 - (d) an Official Assignee;
 - (e) a person appointed to carry out an investigation under section 55 of the Building Societies Act 1986;

- (f) a body administering a compensation scheme under section 54 of the Financial Services Act 1986;
 - (g) an inspector appointed under section 94 of that Act;
 - (h) a person exercising powers by virtue of section 106 of that Act;
 - (j) an inspector appointed under section 177 of that Act or any corresponding enactment having effect in Northern Ireland;
 - (k) an inspector appointed under section 38 of the Banking Act 1987;
 - (l) a person exercising powers by virtue of section 44(2) of the Insurance Companies Act 1982;
 - (m) any body having supervisory, regulatory or disciplinary functions in relation to any profession or any area of commercial activity; and
 - (n) any person or body having, under the law of any country or territory outside the United Kingdom, functions corresponding to any of the functions of any person or body mentioned in any of the foregoing paragraphs.
- (6) An order under subsection (4)(d) above may impose conditions subject to which, and otherwise restrict the circumstances in which, information may be disclosed under that paragraph.

55 Power to petition for winding up etc. on information obtained under section 52

The words "or section 52 of the Criminal Justice (Scotland) Act 1987" shall be inserted—

- (a) in section 440 of the Companies Act 1985, after the words "that Act";
- (b) in section 8(1) of the Company Directors Disqualification Act 1986, after the words "the Financial Services Act 1986", in the second place where they occur; and
- (c) in Article 43 3 of the Companies (Northern Ireland) Order 1986, after the words "that Act".

Conditional offer by procurator fiscal

56 Conditional offer of fixed penalty by procurator fiscal

- (1) Where a procurator fiscal receives a report that a relevant offence has been committed he may send to the alleged offender a notice under this section (referred to in this section as a conditional offer); and where he issues a conditional offer the procurator fiscal shall notify the clerk of court specified in it of the issue of the conditional offer and of its terms.
- (2) In this section "a relevant offence" means any offence in respect of which an alleged offender could competently be tried before a district court, but shall not include a fixed penalty offence within the meaning of section 27(5) as extended by section 42(3) of the Transport Act 1982.
- (3) A conditional offer—
 - (a) shall give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence;
 - (b) shall state—
 - (i) the amount of the fixed penalty for that offence;

Status: This is the original version (as it was originally enacted).

- (ii) the amount of the instalments by which the penalty may be paid; and
 - (iii) the intervals at which such instalments should be paid;
 - (c) shall indicate that if, within twenty-eight days of the date on which the conditional offer was issued, or such longer period as may be specified in the conditional offer, the alleged offender accepts the offer by making payment of the fixed penalty or of the first instalment thereof to the clerk of court specified in the conditional offer at the address therein mentioned, any liability to conviction of the offence shall be discharged;
 - (d) shall state that proceedings against the alleged offender shall not be commenced in respect of that offence until the end of a period of twenty-eight days from the date on which the conditional offer was issued, or such longer period as may be specified in the conditional offer; and
 - (e) shall state that acceptance of the offer in the manner described in paragraph (c) above by the alleged offender shall not be a conviction nor be recorded as such.
- (4) Where payment of the fixed penalty or of the first instalment has not been made to the clerk of court, he shall, upon the expiry of the period of twenty-eight days referred to in subsection (3)(c) above or such longer period as may be specified in the conditional offer, notify the procurator fiscal who issued the conditional offer that no payment has been made.
- (5) Proceedings shall not be brought against any person for the offence to which a conditional offer relates until the procurator fiscal receives notification from the clerk of court in accordance with subsection (4) above.
- (6) Where an alleged offender makes payment of the fixed penalty or of the first instalment to the clerk of court specified in the conditional offer no proceedings shall be brought against the alleged offender for the offence.
- (7) The fixed penalty under this section shall be such sum, not exceeding level 1 on the standard scale, as the Secretary of State may, by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament determine; and an order under this subsection may contain provision as to the payment of the fixed penalty by instalments.
- (8) Subject to subsection (9) below, where an alleged offender accepts a conditional offer by paying the first instalment of the fixed penalty, any amount of the penalty which is outstanding at any time shall be treated as if the penalty were a fine imposed by the court, the clerk of which is specified in the conditional offer.
- (9) In the enforcement of a penalty which is to be treated as a fine in pursuance of subsection (8) above—
 - (a) any reference (howsoever expressed) in any enactment (whether passed or made before or after the coming into force of this section) to—
 - (i) the imposition of imprisonment or detention in default of payment of a fine shall be construed as a reference to enforcement by means of civil diligence;
 - (ii) the finding or order of the court imposing the fine shall be construed as a reference to a certificate given in pursuance of subsection (10) below;
 - (iii) the offender shall be construed as a reference to the alleged offender;

Status: This is the original version (as it was originally enacted).

- (iv) the conviction of the offender shall be construed as a reference to the acceptance of the conditional offer by the alleged offender;
 - (b) the following enactments shall not apply—
 - (i) in the 1975 Act—
 - section 395(1);
 - section 395A(2);
 - section 396(1) to (6);
 - section 403(6);
 - section 406;
 - section 407, except subsection (1)(b);
 - sections 408 and 409;
 - section 411(3); and
 - (ii) in the Criminal Justice (Scotland) Act 1980, section 52.
- (10) For the purposes of any proceedings in connection with, or steps taken for, the enforcement of any amount of a fixed penalty which is outstanding, a document purporting to be a certificate signed by the clerk of court for the time being responsible for the collection or enforcement of the penalty as to any matter relating to the penalty shall be conclusive of the matter so certified.
- (11) The Secretary of State may, by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, make such provision as he considers necessary for the enforcement in England and Wales or Northern Ireland of any penalty (treated, in pursuance of subsection (8) above, as a fine) which is transferred as a fine to a court in England and Wales or, as the case may be, Northern Ireland.

Sittings of the High Court

57 High Court sittings

- (1) For section 112 of the 1975 Act (sittings of the Court of Justiciary) there shall be substituted the following new section—

“112 Place of High Court sittings.

Any crime or offence which is triable on indictment may be tried by the High Court sitting at any place in Scotland.”.

- (2) For section 114 of that Act (power of High Court to determine circuits etc.) there shall be substituted the following new section—

“114 Fixing of High Court sittings.

- (1) The High Court shall sit at such times and places as the Lord Justice General, whom failing the Lord Justice Clerk, may, after consultation with the Lord Advocate, determine.
- (2) Without prejudice to subsection (1) above, the High Court shall hold such additional sittings as the Lord Advocate may require.

Status: This is the original version (as it was originally enacted).

- (3) Where an accused person has been cited to attend a sitting of the High Court, the prosecutor may, at any time before the commencement of his trial, apply to the Court to transfer the case to another sitting of the High Court; and a single judge of the High Court may,—
- (a) after giving the accused or his counsel an opportunity to be heard; or
 - (b) on the joint application of all parties,
- make an order for the transfer of the case.
- (4) Where no cases have been indicted for a sitting of the High Court or if it is no longer expedient that a sitting should take place, it shall not be necessary for the sitting to take place.
- (5) If any case remains indicted for a sitting which does not take place in pursuance of subsection (4) above, subsection (3) above shall apply in relation to the transfer of any such case to another sitting.”.

Sentencing power of the sheriff

58 Sentencing power of sheriff in solemn procedure

- (1) In section 2 of the 1975 Act (which limits the term of imprisonment which the sheriff may impose on indictment)—
- (a) in subsection (2), for the words "two years" there shall be substituted the words "three years";
 - (b) after subsection (2) there shall be inserted the following subsections—
 - “(3) Subject to subsection (4) below, where under any enactment passed or made before the commencement of section 58 of the Criminal Justice (Scotland) Act 1987 an offence is punishable on conviction on indictment by imprisonment for a term exceeding two years but the enactment either expressly or impliedly restricts the power of the sheriff to impose a sentence of imprisonment for a term exceeding two years, it shall be competent for the sheriff to impose a sentence of imprisonment for a term exceeding two but not exceeding three years.
 - (4) Nothing in subsection (3) above shall authorise the imposition by the sheriff of a sentence in excess of the sentence specified by the enactment as the maximum sentence which may be imposed on conviction of the offence.”.
- (2) In section 104 of the 1975 Act, after subsection (1) there shall be inserted the following new subsection—
- “(1A) Where under any enactment an offence is punishable on conviction on indictment by imprisonment for a term exceeding three years but the enactment either expressly or impliedly restricts the power of the sheriff to impose a sentence of imprisonment for a term exceeding three years, it shall be competent for the sheriff to remit the convicted person to the High Court for sentence under subsection (1) above; and it shall be competent for the High Court to pass any sentence which it could have passed if the person had been convicted before it.”.

- (3) In section 221(1) of that Act (abolition of penal servitude and hard labour), in the proviso, for the words "two years" there shall be substituted the words "three years".

Detention of children

59 Detention of children in summary proceedings

- (1) For section 413 of the 1975 Act (committal for residential training) there shall be substituted the following new section—

“413 Detention of children.

- (1) Where a child appears before the sheriff in summary proceedings and pleads guilty to, or is found guilty of, an offence to which this section applies, the sheriff may order that he be detained in residential care by the appropriate local authority for such period, not exceeding one year, as the sheriff may determine in such place (in any part of the United Kingdom) as the local authority may, from time to time, consider appropriate.
- (2) This section applies to any offence in respect of which it is competent to impose imprisonment on a person of the age of 21 years or more.
- (3) In this section—
"the appropriate local authority" means—
(a) where the child usually resides in Scotland, the regional or islands council for the area in which he usually resides;
(b) in any other case, the regional or islands council for the area in which the offence was committed;
"care" shall be construed in accordance with section 32(3) of the 1968 Act, and the provisions of that Act specified in section 44(5) of that Act shall apply in respect of a child who is detained in residential care in pursuance of this section as they apply in respect of a child who is subject to a supervision requirement;
"the 1968 Act" means the Social Work (Scotland) Act 1968.
- (4) Where a child in respect of whom an order is made under this section is also subject to a supervision requirement within the meaning of the 1968 Act, subject to subsection (6) below, the supervision requirement shall be of no effect during any period for which he is required to be detained under the order.
- (5) The Secretary of State may, by regulations made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, make such provision as he considers necessary as regards the detention in secure accommodation (within the meaning of the 1968 Act) of children in respect of whom orders have been made under this section.
- (6) Section 20A of the 1968 Act (review of children in care) shall apply to a child detained in residential care in pursuance of an order under this section as if the references to care in that section were references to care within the meaning of this section; and, without prejudice to their duty to do so by virtue of the said section 20A, the local authority may, at any time, review the case of such a child and may, in consequence of such a review and after having regard to

Status: This is the original version (as it was originally enacted).

the best interests of the child and the need to protect members of the public, release the child—

- (a) for such period and on such conditions as they consider appropriate; or
- (b) unconditionally,

and where a child who is released unconditionally is subject to a supervision requirement within the meaning of the 1968 Act, the effect of the supervision requirement shall, in the case of a supervision requirement imposed during the period of detention, commence or, in any other case, resume upon such release.

- (7) Where a local authority consider it appropriate that a child in respect of whom an order has been made under subsection (1) above should be detained in a place in any part of the United Kingdom outside Scotland, the order shall be a like authority as in Scotland to the person in charge of the place to restrict the child's liberty to such an extent as that person may consider appropriate having regard to the terms of the order.”.

- (2) In section 463 of the 1975 Act—

- (a) in subsection (1)(b) for the words "and 390" there shall be substituted the words ", 390 and 413"; and
- (b) in subsection (1A) for the words "and 374" there shall be substituted the words ", 374 and 413".

- (3) Notwithstanding the repeal by this Act of section 58A of the Children and Young Persons (Scotland) Act 1937, any child who, before the commencement of this section, has been ordered to be detained pursuant to the directions of the Secretary of State under section 413 of the 1975 Act—

- (a) shall, while so detained after such commencement, continue to be deemed to be in legal custody; and
- (b) may at any time be released conditionally or unconditionally by the Secretary of State, and any such child conditionally released shall be liable to recall on the directions of the Secretary of State and if he fails to comply with any condition of his release he may be apprehended without warrant and taken to the place from which he was released.

Evidence

60 Transcript of police interview sufficient evidence

- (1) Subject to subsection (2) below, for the purposes of any criminal proceedings, a document certified by the person who made it as an accurate transcript made for the prosecutor of the contents of a tape (identified by means of a label) purporting to be a recording of an interview between a police officer and an accused person shall be received in evidence and be sufficient evidence of the making of the transcript and of its accuracy.
- (2) Subsection (1) above shall not apply to a transcript—
 - (a) unless a copy of it has been served on the accused not less than 14 days before his trial; or
 - (b) if the accused, not less than six days before his trial, or by such later time before his trial as the court may in special circumstances allow, has served

notice on the prosecutor that the accused challenges the making of the transcript or its accuracy.

- (3) A copy of the transcript or a notice under subsection (2) above may be served personally or sent to the person on whom it is required to be served by registered post or by the recorded delivery service; and a written execution purporting to be signed by the person who served the transcript or notice, together with, where appropriate, a post office receipt for the relative registered or recorded delivery letter shall be sufficient evidence of such service.
- (4) Where subsection (1) above does not apply to a transcript, if the person who made the transcript is called as a witness his evidence shall be sufficient evidence of the making of the transcript and of its accuracy.

61 Evidence on commission

- (1) Section 32 of the Criminal Justice (Scotland) Act 1980 (which permits, in certain circumstances, the taking and admission of evidence on commission or by letter of request) shall have effect subject to the amendments specified in subsections (2) and (3) below.
- (2) In paragraph (b) of subsection (1)—
 - (a) after the word "who" there shall be inserted "(i)"; and
 - (b) at the end of the paragraph there shall be inserted the words “or
(ii) is not ordinarily resident in, and is, at the time of the trial diet, unlikely to be present in, the United Kingdom, Channel Islands or the Isle of Man.”.
- (3) In subsection (4) at the end there shall be added the words "; and without prejudice to the generality of the power to make it, such an Act of Adjournal may provide for the appointment of a person before whom evidence may be taken for the purposes of this section."

Miscellaneous

62 Ordaining to appear

- (1) In section 328 of the 1975 Act (adjournment for inquiry)—
 - (a) after the words "liberate him on bail" there shall be inserted the words ", ordain him to appear"; and
 - (b) in the proviso, after the words "allow bail" there shall be inserted the words "or to ordain a person to appear".
- (2) In section 329(1) of the 1975 Act (remand and committal of persons under 21) after the words "released on bail" there shall be inserted the words "or ordained to appear".
- (3) In paragraph (d) of section 337 of the 1975 Act (procedure following plea of not guilty by accused in custody) for the words from "either" there shall be substituted the following—
 - “(i) if he is neither granted bail nor ordained to appear, or
 - (ii) if he is granted bail on a condition imposed under section 1(3) of the Bail etc. (Scotland) Act 1980 that a sum of money is

Status: This is the original version (as it was originally enacted).

deposited in court, until the accused or a cautioner on his behalf has so deposited that sum.”.

(4) In section 300 of the 1975 Act (bail appeals)—

- (a) in subsection (1)
 - (i) after the word "granted" there shall be inserted the words "or where the person is ordained to appear", and
 - (ii) after the words "amount fixed" there shall be inserted the words "or that such person has been ordained to appear"; and
- (b) after subsection (4) there shall be inserted the following new subsection—

“(4A) When an appeal is taken by the prosecutor under this section against the fact that the person has been ordained to appear, subsection (4) above shall apply as it applies in the case of an appeal against the granting of bail or against the amount fixed.”.

63 Power to permit witness to be in court during trial

After each of sections 139 and 342 of the 1975 Act there shall be inserted the following new section where it shall be numbered respectively 139A and 342A—

Power to permit witness to be in court during trial.

The court may, on an application by any party to the proceedings, permit a witness to be in court during the proceedings or any part of the proceedings before he has given evidence if it appears to the court that the presence of the witness would not be contrary to the interests of justice.”.

64 Aiding and abetting

(1) In each of sections 216 and 428 of the 1975 Act for the words "statute or order" there shall be substituted the word "enactment"; and each of those sections as so amended shall be subsection (1) of that section and in each of those sections there shall be inserted the following subsection—

“(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 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.”.

(2) Subsection (1) above shall not apply to an offence committed before the commencement of this section.

65 Compensation requirement in probation order

(1) In each of sections 183 and 384 of the 1975 Act (probation orders) after subsection (5A) there shall (subject to subsection (2) below) be inserted the following subsections—

“(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

Status: This is the original version (as it was originally enacted).

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));
- 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 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.”.

(2) In inserting the new subsection (5B)—

- (a) into the said section 183, after the words "subsection (1)" in the reference in that new subsection to section 59 of the Criminal Justice (Scotland) Act 1980 there shall be added the words "and subsection (2)";
- (b) into the said section 384, after the words "subsection (1)" in that reference there shall be added the words "and subsection (3)".

(3) In subsection (4) of each of the said sections 183 and 384 after the words "subsection (5A)" there shall be inserted the words "or (5B)".

(4) In subsection (6) of each of the said sections 183 and 384 for the words "or (5A)" there shall be substituted the words "(5A), (5B) or (5C)".

(5) In each of sections 186(2)(a) and 387(2)(a) of the 1975 Act (failure to comply with requirements of a probation order) at the beginning of the paragraph there shall be inserted the words "except in the case of a failure to comply with a requirement to pay compensation and".

66 Penalties in respect of summary conviction for certain offences

- (1) In section 289G of the 1975 Act (which creates the standard scale and amends certain enactments accordingly), after subsection (9) there shall be added the following new subsections—

“(10) Subject to subsection (12) below, where under a relevant subordinate instrument the fine or maximum fine on conviction of a summary offence specified in the instrument is an amount shown in the second column of the standard scale, the reference in the instrument to the amount of the fine or maximum fine shall be construed as a reference to the level in the first column of the standard scale corresponding to that amount.

(11) In subsection (10) above, "relevant subordinate instrument" means any instrument made by virtue of an enactment after 30th April 1984 and before the commencement of section 66 of the Criminal Justice (Scotland) Act 1987.

(12) Subsection (10) above shall not affect so much of any instrument as (in whatever words) makes a person liable on summary conviction to a fine not exceeding a specified amount for each period of a specified length during which a continuing offence is continued after conviction or the occurrence of any other specified event.

(13) Where there is, under any enactment (however framed or worded) contained in an Act passed before the commencement of section 66 of the Criminal Justice (Scotland) Act 1987, a power to create summary offences by subordinate instrument, the maximum fine for a summary offence so created may be expressed as a fine not exceeding a level on the standard scale.

(14) Subsection (13) above has effect in relation to exercises of powers before as well as after the commencement of section 66 of the Criminal Justice (Scotland) Act 1987.”.

- (2) After section 289G of the 1975 Act there shall be inserted the following new sections—

“289GA Statutory maximum as penalty in respect of summary conviction for offences in subordinate instruments.

(1) Where there is, under any enactment (however framed or worded) contained in an Act passed before the commencement of section 66 of the Criminal Justice (Scotland) Act 1987, a power by subordinate instrument to create a criminal offence triable either on indictment or summarily, the maximum fine which may, in the exercise of the power, be authorised on summary conviction shall, by virtue of this section, be the statutory maximum (unless some larger maximum fine can be authorised on summary conviction of such an offence by virtue of an enactment other than this subsection).

(2) Where there is, under any enactment (however framed or worded) contained in an Act passed before the commencement of section 66 of the Criminal Justice (Scotland) Act 1987, a power to create offences triable either on indictment or summarily by subordinate instrument, the maximum fine on summary conviction for such an offence may be expressed as a fine not exceeding the statutory maximum.

Status: This is the original version (as it was originally enacted).

- (3) Subsections (1) and (2) above shall have effect in relation to any exercise of such power before as well as after the commencement of section 66 of the Criminal Justice (Scotland) Act 1987.
- (4) Where an offence created by a subordinate instrument made before the commencement of section 66 of the Criminal Justice (Scotland) Act 1987 may be tried either on indictment or summarily, the maximum fine which may be imposed on summary conviction shall by virtue of this subsection be the statutory maximum (unless the offence is one for which by virtue of the instrument a larger maximum fine may be imposed on summary conviction).
- (5) Where a person summarily convicted of any offence to which subsection (4) above relates would, apart from this section, be liable to a fine or to a maximum fine of an amount in the case of a first conviction and of a different amount in the case of a second or subsequent conviction, subsection (4) above shall apply irrespective of whether the conviction is a first, second or subsequent one.
- (6) Subsection (4) above shall not affect so much of any instrument as (in whatever words) makes a person liable on summary conviction to a fine not exceeding a specified amount for each period of a specified length during which a continuing offence is continued after conviction or the occurrence of any other specified event.
- (7) Nothing in this section shall affect the punishment for an offence committed before the commencement of section 66 of the Criminal Justice (Scotland) Act 1987.

289GB Exceptionally high maximum fines.

- (1) The Secretary of State may by order amend an enactment or subordinate instrument specifying a sum to which this subsection applies so as to substitute for that sum such other sum as appears to him—
 - (a) to be justified by a change in the value of money appearing to him to have taken place since the last occasion on which the sum in question was fixed; or
 - (b) to be appropriate to take account of an order altering the standard scale which has been made or is proposed to be made.
- (2) Subsection (1) above applies to any sum which—
 - (a) is higher than level 5 on the standard scale; and
 - (b) is specified as the fine or the maximum fine which may be imposed on conviction of an offence which is triable only summarily.
- (3) The Secretary of State may by order amend an enactment or subordinate instrument specifying a sum to which this subsection applies so as to substitute for that sum such other sum as appears to him—
 - (a) to be justified by a change in the value of money appearing to him to have taken place since the last occasion on which the sum in question was fixed; or
 - (b) to be appropriate to take account of an order made or proposed to be made altering the statutory maximum.

Status: This is the original version (as it was originally enacted).

- (4) Subsection (3) above applies to any sum which—
- (a) is higher than the statutory maximum; and
 - (b) is specified as the maximum fine which may be imposed on summary conviction of an offence triable either on indictment or summarily.
- (5) An order under this section—
- (a) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and
 - (b) shall not affect the punishment for an offence committed before that order comes into force.
- (6) In this section—
- "enactment" includes an enactment contained in an Act passed after the Criminal Justice (Scotland) Act 1987; and
- "subordinate instrument" includes an instrument made after the passing of that Act."

67 Increases in periods of imprisonment for non-payment of fines etc.

- (1) In subsection (1A) of section 407 of the 1975 Act (periods of imprisonment for non-payment of fines), in the Table, for the entry relating to an amount exceeding £50,000 there shall be substituted the following entries—

“Exceeding £50,000 but not exceeding £100,000	2 years
Exceeding £100,000 but not exceeding £250,000	3 years
Exceeding £250,000 but not exceeding £1 million	5 years
Exceeding £1 million	10 years.”.

- (2) At the end of the said section 407 there shall be added the following subsection—

- “(5) Where in any case—
- (a) the sheriff considers that the imposition of imprisonment for the number of years for the time being specified in section 2(2) of this Act would be inadequate; and
 - (b) the maximum period of imprisonment which may be imposed under subsection (1) above (or under that subsection as read with either or both of sections 66(2) of the Criminal Justice (Scotland) Act 1980 and 7(2) of the Criminal Justice (Scotland) Act 1987) exceeds that number of years,

he shall remit the case to the High Court for sentence.”.

68 Suspension of disqualification, forfeiture etc.

- (1) After section 443 of the 1975 Act there shall be inserted the following new section—

“443A Suspension of disqualification, forfeiture etc.

- (1) Where upon conviction of any person—
- (a) any disqualification, forfeiture or disability attaches to him by reason of such conviction; or
 - (b) any property, matters or things which are the subject of the prosecution or connected therewith are to be or may be ordered to be destroyed or forfeited,

if the court before which he was convicted thinks fit, the disqualification, forfeiture or disability or, as the case may be, destruction or forfeiture or order for destruction or forfeiture shall be suspended pending the determination of any appeal against conviction or sentence.

- (2) Subsection (1) above does not apply in respect of any disqualification, forfeiture or, as the case may be, destruction or forfeiture or order for destruction or forfeiture under or by virtue of any enactment which contains express provision for the suspension of such disqualification, forfeiture or, as the case may be, destruction or forfeiture or order for destruction or forfeiture pending the determination of any appeal against conviction or sentence.”.

- (2) In section 264 of that Act (suspension of disqualification, forfeiture etc. in solemn proceedings) after subsection (2) there shall be inserted the following new subsection—

“(3) Subsections (1) and (2) above do not apply in respect of any disqualification, forfeiture or, as the case may be, destruction or forfeiture or order for destruction or forfeiture under or by virtue of any enactment which contains express provision for the suspension of such disqualification, forfeiture or, as the case may be, destruction or forfeiture or order for destruction or forfeiture pending the determination of any appeal against conviction or sentence.”.

- (3) Section 2 of the Act of Adjournal, Suspension of Disqualification from Driving Pending Appeal 1975 is hereby revoked.