



# Criminal Procedure (Scotland) Act 1975

## 1975 CHAPTER 21

### PART II

#### SUMMARY PROCEDURE

##### Modifications etc. (not altering text)

- C1** Pt. II (ss. 282–457) extended with modifications by [Road Traffic Offenders Act 1988 \(c. 53, SIF 107:1\)](#), s. 60(5)

#### *Jurisdiction*

#### **283 Application of Part II of this Act.**

- (1) This Part of this Act shall apply to summary proceedings in respect of—
- any offence which might prior to the passing of this Act, or which may under the provisions of this or any Act, whether passed before or after the passing of this Act, be tried in a summary manner;
  - any offence or the recovery of a penalty under any [<sup>F1</sup>enactment or rule of law] which does not exclude summary procedure [<sup>F2</sup>as well as, in accordance with section 196(1) of this Act, to the enforcement of a fine imposed in solemn proceedings];
  - any order *ad factum praestandum*, or other order of court or warrant competent to a court of summary jurisdiction;

and shall apply to procedure in all courts of summary jurisdiction in so far as they have jurisdiction in the matters aforesaid.

- (2) Where any statute provides for summary proceedings or appeal therefrom being taken under any public general or local enactment, such proceedings or appeal shall be taken under this Part of this Act.
- (3) Nothing in this Part of this Act shall extend to any information or complaint or other proceeding under or by virtue of any statutory provision for the recovery of any rate,

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tax, or impost whatsoever, or shall affect any right to sue for a penalty, or to apply for an order of court or other warrant *ad factum praestandum* in the Court of Session or sheriff court, but it shall not be competent to sue for penalties in the small debt court.

#### Textual Amendments

- F1** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **Sch. 7 para. 48(a)**  
**F2** Words inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **Sch. 7 para. 48(b)**

### [<sup>F3</sup>283A Offences which are to become triable only summarily.

- (1) [<sup>F4</sup>Subject to section 8 of the <sup>M1</sup>Criminal Justice (Scotland) Act 1980, but otherwise] The provisions of this or any other enactment notwithstanding, the offences mentioned (and broadly described) in column 1 of Schedule 7A to this Act shall be triable only summarily.
- (2) Subsection (1) above is without prejudice to any other provision by virtue of which any offence is triable only summarily.]

#### Textual Amendments

- F3** S. 283A inserted by [Criminal Law Act 1977 \(c. 45, SIF 39:1\)](#), **Sch. 11 para. 2**  
**F4** Words inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **Sch. 7 para. 49**

#### Marginal Citations

- M1** [1980 c. 62\(39:1\)](#).

### 284 Jurisdiction of inferior courts.

The jurisdiction and powers of all courts of summary jurisdiction, except in so far as the same may be altered or modified by any future Act shall remain as at the commencement of this Act and the district court shall, without prejudice to any other or wider powers conferred by statute, be entitled to exercise power on convicting of a common law offence—

- (a) to award imprisonment for any period not exceeding 60 days;
- (b) to impose a fine not exceeding [<sup>F5</sup>level 4 on the standard scale];
- (c) to ordain the accused (in lieu of or an addition to such imprisonment or fine) to find caution for good behaviour for any period not exceeding six months and to an amount not exceeding [<sup>F5</sup>level 4 on the standard scale];
- (d) failing payment of such fine or on failure to find such caution, to award imprisonment in accordance with section 407 of this Act:

Provided that in no case shall the total imprisonment exceed 60 days.

#### Textual Amendments

- F5** Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 56, **Sch. 7**

#### Modifications etc. (not altering text)

- C2** S. 284 extended by [Animal Health Act 1981 \(c. 22, SIF 4:4\)](#), s. 92(2)

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## 285 Certain crimes not to be tried in inferior courts.

A court of summary jurisdiction other than the sheriff court shall not have jurisdiction to try or to pronounce sentence in, but shall, to the extent and in the manner mentioned in the next following section, be entitled to take cognizance of the case of any person—

- (a) found within the jurisdiction of such court, and brought before it accused or suspected of having committed at any place beyond the jurisdiction of such court any offence, or
- (b) brought before such court accused or suspected of having committed within the jurisdiction thereof any of the following offences:—
  - (i) murder, culpable homicide, robbery, rape, wilful fire-raising, or attempt at wilful fire-raising:
  - (ii) stouthrief, theft by housebreaking, or housebreaking with intent to steal:
  - (iii) theft or reset of theft, falsehood fraud or wilful imposition, breach of trust or embezzlement, all to an amount exceeding [<sup>F6</sup>level 4 on the standard scale].
  - (iv) . . . <sup>F7</sup>
  - (v) assault whereby any limb has been fractured, or assault with intent to ravish, or assault to the danger of life, or assault by stabbing:
  - (vi) uttering forged documents or uttering forged bank or banker's notes, or offences under the Acts relating to coinage:

. . . <sup>F8</sup>

### Textual Amendments

- F6** Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 56, [Sch. 7](#)
- F7** [S. 285\(b\)\(iv\)](#) repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 7(3), [Sch. 8](#)
- F8** Proviso repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 7(3), [Sch. 8](#)

## 286 Remit to higher court or other jurisdiction.

If either in the preliminary investigation or in the course of the trial of any offence it shall appear that the offence is one which cannot competently be tried in the court before which an accused is brought, or is one which, in the opinion of the court in view of the circumstances of the case, should be dealt with by a higher court, it shall be lawful for the court to commit the accused to prison for examination for any period not exceeding four days, and the prosecutor shall forthwith give notice of such committal to the procurator fiscal of the district within which such offence was committed, or to such other official as may be entitled to take cognizance thereof, in order that the accused may be dealt with according to law.

### Modifications etc. (not altering text)

- C3** [S. 286](#) extended by [Contempt of Court Act 1981 \(c. 49, SIF 39:3\)](#), s. 15(5)

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## 287 Boundaries of jurisdiction.

- (1) Where an offence is committed in any harbour, river, arm of the sea or other water (tidal or otherwise) which runs between or forms the boundary of the jurisdiction of two or more courts, such offence may be tried by any one of such courts.
- (2) Where an offence is committed on the boundary of the jurisdiction of two or more courts, or within the distance of 500 yards of any such boundary, or partly within the jurisdiction of one court and partly within the jurisdiction of another court or courts, such offence may be tried by any one of such courts.
- (3) Where an offence is committed on any person or in respect of any property in or upon any carriage, cart or vehicle employed in a journey by road or railway, or on board any vessel employed in a river, lake, canal or inland navigation, such offence may be tried by any court through whose jurisdiction such carriage, cart, vehicle or vessel passed in the course of the journey or voyage during which the offence was committed, and, where the side, bank, centre or other part of the road, railway, river, lake, canal or inland navigation along which the carriage, cart, vehicle or vessel passed in the course of such journey or voyage is the boundary of the jurisdiction of two or more courts, such offence may be tried by any one of such courts.
- (4) Where several offences, which if committed in one sheriff court district could be tried under one complaint, are alleged to have been committed by any person in different sheriff court districts, the accused may be tried for all or any of those offences under one complaint before the sheriff of any one of such sheriff court districts.
- (5) Where an offence is authorised by this section to be tried by any court, it may be dealt with, heard, tried, determined, adjudged and punished as if the offence had been committed wholly within the jurisdiction of such court.

### Modifications etc. (not altering text)

- C4 S. 287(4) modified (3.2.1995) by 1984 c. 39, s. 16C(1) (as inserted (3.2.1995) by 1994 c. 33, s. 91(3); S.I. 1995/127, art. 2(1), Sch. 1)

## 288 Jurisdiction of sheriff.

- (1) Subject to the provisions of this section, the jurisdiction of the sheriffs within their respective sheriffdoms shall extend to and include all navigable rivers, ports, harbours, creeks, shores and anchoring grounds in or adjoining such sheriffdoms and shall include all criminal maritime causes and proceedings (including such as may apply to persons furth of Scotland) provided the accused shall upon any legal ground of jurisdiction be subject to the jurisdiction of the sheriff before whom such cause or proceeding may be raised.
- (2) It shall not be competent to the sheriff to try any crime committed on the seas which it would not be competent for him to try if the crime had been committed on land.
- (3) Where sheriffdoms are separated by a river, firth, or estuary, the sheriffs on either side shall have concurrent jurisdiction over the intervening space occupied by water.
- (4) The sheriff shall have a concurrent jurisdiction with every other court within his sheriffdom in relation to all offences competent for trial in such courts.

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## 289 Summary powers of sheriff.

The sheriff shall, without prejudice to any other or wider powers conferred by statute, have power on convicting any person of a common law offence—

- (a) to impose a fine not exceeding [<sup>F9</sup>the prescribed sum (within the meaning of section 289B below)];
- (b) to ordain the accused to find caution for good behaviour for any period not exceeding 12 months and to an amount not exceeding [<sup>F10</sup>the prescribed sum (within the meaning of section 289B below)], such caution being either in lieu of or in addition to a fine or in addition to imprisonment as hereafter in this section mentioned;
- (c) failing payment of such fine, or on failure to find such caution, to award imprisonment in accordance with section 407 of this Act;
- (d) to award imprisonment, for any period not exceeding three months.

### Textual Amendments

**F9** Words substituted by [Criminal Law Act 1977 \(c. 45, SIF 39:1\)](#), [Sch. 11 para. 4\(1\)](#)

**F10** Words substituted by [Criminal Law Act 1977 \(c. 45, SIF 39:1\)](#), [Sch. 11 para. 4\(2\)](#)

## [<sup>F11</sup>289A Amendments relating to penalties (and mode of trial) for offences made triable only summarily.

- (1) The enactments specified in column 2 of Schedule 7A to this Act (which relate to the modes of trial of, and the maximum penalties for, the offences which are by section 283A of this Act made triable only summarily) shall so far as they relate to Scotland have effect subject to the amendments specified in column 3 of that Schedule.
- (2) The said amendments have the effect of altering the maximum penalties available on summary conviction of those offences as well as making alterations consequential on their becoming triable only summarily; and in that Schedule column 4 shows the present maximum penalties by way of fine or imprisonment on summary conviction and on conviction on indictment, and column 5 shows the new maximum penalties resulting from the amendments.]

### Textual Amendments

**F11** [Ss. 289A–289D](#) inserted by [Criminal Law Act 1977 \(c. 45, SIF 39:1\)](#), [Sch. 11 para. 5](#)

## [<sup>F12</sup>289B Penalties on summary conviction for offences triable either summarily or on indictment.

- (1) Where an offence created by a relevant enactment may be tried either on indictment or summarily, the penalty or maximum penalty on summary conviction shall, to the extent that it included, immediately before the commencement of section 55 of the Criminal Justice Act 1982, a penalty or maximum penalty mentioned in column 1 of the Table below, be amended so as to substitute as a maximum penalty the corresponding penalty set forth in column 2 thereof (unless provision is expressly made by any enactment for a larger penalty or maximum penalty on summary conviction)—

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**Column 1**

**Penalty or maximum penalty at commencement of section 55 of Criminal Justice Act 1982**

1. Fine (other than a fine specified in paragraph 3 below, or a fine in respect of each period of a specified length during which a continuing offence is committed).
2. Imprisonment for a period exceeding 3 months.
3. Fine in respect of a specified quantity or number of things.
4. Fine exceeding £100 in respect of each period of a specified length during which a continuing offence is committed.

**Column 2**

**New maximum penalty**

1. Fine not exceeding the prescribed sum.
  2. Imprisonment for a period not exceeding 3 months.
  3. Fine not exceeding the prescribed sum in respect of each such quantity or number.
  4. Fine not exceeding £100 in respect of each such period.
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(2) Where, by virtue of a relevant enactment, a person summarily convicted of any offence to which subsection (1) above relates would, apart from this section, be liable to a fine or a maximum fine of one amount in the case of a first conviction and of a different amount in the case of a second or subsequent conviction, subsection (1) above shall apply irrespective of whether the conviction is a first, second or subsequent one.

(3) .....<sup>F13</sup>

(5) Subsection (1) above is without prejudice to section 290 of this Act (6 months' imprisonment competent for certain offences).

(6) In this section—

“the prescribed sum” means [<sup>F14</sup>£2,000] or such sum as is for the time being substituted in this definition by an order in force under section 289D(1) of this Act;

“relevant enactment” means an enactment contained in the <sup>M2</sup>Criminal Law Act 1977 or in any Act (including this Act) passed before, or in the same session as, that Act.

(7) [<sup>F15</sup>Section 289GA(1) of this Act] shall not affect so much of any enactment as (in whatever words) provides for a person to be made liable, on summary conviction, to a fine or a maximum fine for each period of a specified length during which a continuing offence is committed.

(8) Where an enactment to which [<sup>F16</sup>section 289GA(1) of this Act] applies provides for a person to be made liable to a penalty or maximum penalty on summary conviction of an offence triable either on indictment or summarily which includes a fine or a maximum fine in respect of a specified quantity or a specified number of things, that subsection shall apply to that fine or maximum fine.

(9) Schedule 7B to this Act shall have effect for the purpose of altering the penalties or maximum penalties available on summary conviction of the offences therein

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mentioned; and subsection (1) above shall not apply on summary conviction of any of the offences mentioned in paragraph 1(2) of the said Schedule 7B.]

#### Textual Amendments

- F12** S. 289B substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 55(2)  
**F13** S. 289B(3)(4) repealed by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(2), Sch. 2  
**F14** Words substituted by S.I. 1984/526, art. 3  
**F15** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 2, Sch. 6 para. 1  
**F16** Words substituted by S.I. 1988/110, rule 10(2)(a)

#### Marginal Citations

- M2** 1977 c. 45(39:1).

### 289C Increase of fines for certain summary offences.

- (1) The enactments specified in column 2 of Schedule 7C to this Act, which relate to the maximum fines for the offences mentioned (and broadly described) in column 1 of that Schedule, shall have effect as if the maximum fine that may be imposed on summary conviction of any offence so mentioned were a fine not exceeding the amount specified in column 4 of that Schedule instead of a fine not exceeding the amount specified in column 3 of that Schedule, so however that the preceding provision shall not alter the maximum daily fine, if any, provided for by any of those enactments.
- (2) This subsection applies to the following enactments (by virtue of which certain byelaws may make persons contravening the byelaws liable on summary conviction to a fine not exceeding £20), namely—
- section 203 of the<sup>M3</sup> Local Government (Scotland) Act 1973 (offences against byelaws) but (the provisions of section 462(11) of this Act notwithstanding) not that section as applied to byelaws made under any provision contained in a local or private Act other than by a local authority; and
  - ...<sup>F17</sup>
- (3) In the enactments to which subsection (2) above applies for any reference to £20 there shall be substituted a reference to £50; and any provision in force at the coming into force of this subsection which—
- is contained in any byelaw made by virtue of any enactment to which subsection (2) above applies; and
  - specifies £20 as the maximum fine which may be imposed on summary conviction in respect of a contravention of, or offence under, any byelaw mentioned in that provision.
- shall have effect as if it specified £50 instead (but with no change by virtue of this subsection in the maximum daily fine, if any, for which it provides).
- [<sup>F18</sup>(4) This subsection applies to any pre-1949 enactment (however framed or worded) which—
- as regards any summary offence makes a person liable on conviction thereof to a fine of, or not exceeding, a specified amount less than £50 which has not been altered since the end of 1948 (and is not altered by this Act); or

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- (b) confers power by subordinate instrument to make a person as regards any summary offence (whether or not created by the instrument), liable on conviction thereof to a fine of, or a maximum fine of, less than £50 which has not been altered since the end of 1948 (and is not altered by this Act):

Provided that this subsection does not apply to any offence to which section 457A(1) (b) of this Act applies (offences triable only summarily other than by virtue of express provision).]

- (5) Every enactment to which subsection (4) above applies shall have effect as if for the specified amount less than £50 there mentioned there were substituted:—
- (a) £25 if the specified amount is less than £20; or
- (b) £50 if the specified amount is not less than £20.
- (6) Where, by virtue of any enactment to which subsection (4) above applies by virtue of paragraph (a) of that subsection, a person convicted of a summary offence would, apart from this section, be liable to a fine, or maximum fine, of one amount in the case of a first conviction and of a different amount in the case of a second or subsequent conviction, subsection (5) above shall apply separately in relation to each specified amount less than £50, even if this produces the same instead of different amounts for different convictions.
- [<sup>F19</sup>(7) Subsection (4) above does not apply to so much of any enactment as (in whatever words) makes a person liable or provides for a person to be made liable, on summary conviction, to a fine or a maximum fine for each period of a specified length during which a continuing offence is committed.
- (7A) Where an enactment to which subsection (4) above applies provides or confers a power to provide for, on conviction of an offence triable only summarily, a fine or a maximum fine in respect of a specified quantity or a specified number of things, “the specified amount” for the purposes of subsection (5) above is the fine or maximum fine so provided or for which provision may be made.]
- (8) In subsection (4) above “pre-1949 enactment” means an enactment passed before 1st January 1949 or an enactment passed on or after that date which (whether directly or, through successive re-enactments, indirectly) re-enacts with or without modification an enactment passed before that date.
- (9) In this section “enactment” does not include an enactment contained in an order, regulation or other instrument made under an Act.

#### Textual Amendments

**F17** S. 289C(2)(b) repealed by [Weights and Measures Act 1985 \(c. 72, SIF 131\)](#), [Sch. 13](#)

**F18** S. 289C(4) substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [s. 55\(3\)\(a\)](#)

**F19** S. 289C(7)(7A) substituted for s. 289C(7) by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 55\(3\)\(b\)](#)

#### Marginal Citations

**M3** [1973 c. 65\(81:2\)](#).

### 289D Power to alter sums specified in certain provisions.

- [<sup>F20</sup>(1) If it appears to the Secretary of State that there has been a change in the value of money since the relevant date, he may by order substitute for the sum or sums for the time



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being specified in the provisions mentioned in subsection (1A) below such other sum or sums as appear to him justified by the change.

(1A) The provisions referred to in subsection (1) above are—

- (a) section 289B(6) of this Act;
- (b) section 289G(2) of this Act;
- (c) section 407(1A) of this Act;
- (d) section 435(e) of this Act;
- (e) section 453(3) of this Act;
- (f) ..... <sup>F21</sup>

(1B) In subsection (1) above “the relevant date” means—

- (a) in relation to the <sup>M4</sup>first order made under that subsection, 29th July 1977 (the date of the passing of the Criminal Law Act 1977); and
- (b) in relation to each subsequent order, the date of the previous order.]

(2) ..... <sup>F21</sup>

(3A) ..... <sup>F22</sup>

(4) An order under subsection (1) . . . <sup>F23</sup> above—

- (a) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament and may be revoked by a subsequent order thereunder; and
- (b) without prejudice to Schedule 14 to the <sup>M5</sup>Criminal Law Act 1977, shall not affect the punishment for an offence committed before that order comes into force.

**Textual Amendments**

- F20** S. 289D(1)(1A)(1B) substituted for s. 289D(1) by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 53(a)
- F21** S. 289D(1A)(f)(g)(2)(3) repealed by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(2), [Sch. 2](#)
- F22** Ss. 289D(3A), 291(1) repealed by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 16](#)
- F23** Words repealed by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(2), [Sch. 2](#)

**Marginal Citations**

- M4** [1977 c. 45\(39:1\)](#).
- M5** [1977 c. 45\(39:1\)](#).

[<sup>F24</sup>**289E Penalties for first and subsequent convictions of summary offences to be the same.**

- (1) Subject to subsections (2) to (4) and (6) below, this section applies where any Act—
- (a) makes a person liable on conviction of an offence triable only summarily to a penalty or a maximum penalty; or
  - (b) confers a power by subordinate instrument to make a person liable on conviction of an offence triable only summarily (whether or not created by the instrument) to a penalty or a maximum penalty

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which is different in the case of a second or subsequent conviction from the penalty or maximum penalty provided or for which provision may be made in the case of a first conviction.

- (2) Where the penalty or maximum penalty for an offence to which section 457A(1)(b) of this Act applies has not been altered by any enactment passed or made after 29th July 1977 (the date of the passing of the Criminal Law Act 1977), this section applies as if the amount referred to in subsection (5)(a) below were the greatest amount to which a person would have been liable on any conviction immediately before that date.
- (3) Where any Act—
- (a) provides or confers a power to provide for a penalty or a maximum penalty which would, but for the operation of section 289C(5) of this Act, be different in the case of a second or subsequent conviction from the penalty or maximum penalty provided for or for which provision may be made in the case of a first conviction; and
  - (b) otherwise fulfils the conditions of subsection (1) above;
- this section applies to that penalty or maximum penalty as if the amount referred to in subsection (5)(a) below were the greatest amount to which a person would have been liable or could have been made liable on any conviction immediately before the commencement of the said section 289C.
- (4) This section does not apply to—
- (a) section 290 of this Act (imprisonment for certain offences);
  - (b) section 78 of the <sup>M6</sup>Criminal Justice (Scotland) Act 1980 (vandalism); or
  - (c) an enactment mentioned in Schedule 7D to this Act.
- (5) Where this section applies the maximum penalty to which a person is or may be made liable by or under the Act in the case of any conviction shall be either or both of—
- (a) a fine not exceeding the greatest amount;
  - (b) imprisonment for a term not exceeding the longest term (if any)
- to which an offender would have been liable or could have been made liable on any conviction (whether the first or a second or subsequent conviction) by or under the Act immediately before the commencement of this section.
- (6) This section does not affect the penalty which may be imposed in respect of an offence committed before it comes into force.]

#### Textual Amendments

**F24** S. 289E–289H inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 54

#### Modifications etc. (not altering text)

**C5** S. 289E amended by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 56(2), [Sch. 8 para. 16](#)

#### Marginal Citations

**M6** 1980 c. 62(39:1).

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## **289F Increase of fines for certain summary offences.**

- (1) Subject to subsections (2) to (7) and (9) below, this section applies where any Act passed on or before 29th July 1977 (the date of the passing of the <sup>M7</sup>Criminal Law Act 1977)—
  - (a) makes a person liable on conviction of an offence triable only summarily to a fine or a maximum fine which is less than £1,000; or
  - (b) confers a power by subordinate instrument to make a person liable on conviction of an offence triable only summarily (whether or not created by the instrument) to a fine or a maximum fine which is less than £1,000, or a fine or a maximum fine which shall not exceed an amount of less than £1,000, and the fine or maximum fine which may be imposed or, as the case may be, for which the subordinate instrument may provide has not been altered by—
    - (i) section 289A of this Act;
    - (ii) section 289C of this Act (except where section 289E(3) of this Act applies);
    - (iii) section 30(3) of the Criminal Law Act 1977;
    - (iv) an enactment passed or made after 29th July 1977 and before the commencement of this section.
- (2) In the case of an offence to which section 457A(1)(b) of this Act applies, paragraphs (i) to (iii) of subsection (1) above do not apply and the fine or the maximum fine referred to in subsection (8) below is the fine or the maximum fine for the offence immediately before 29th July 1977 as amended, where applicable, by section 289E of this Act.
- (3) This section also applies where any enactment—
  - (a) is contained in a consolidation Act passed after 29th July 1977 and before the commencement of this section; and
  - (b) otherwise fulfils the conditions of subsection (1) above as amended by subsection (2) above where it applies; and
  - (c) is a re-enactment (with or without modification) of an enactment passed on or before that date.
- (4) Subject to subsection (9) below, where an Act provides or confers a power to provide for, on conviction of an offence triable only summarily, a fine or a maximum fine in respect of a specified quantity or a specified number of things, that fine or maximum fine is the fine or, as the case may be, the maximum fine for the purposes of this section.
- (5) Where an Act to which this section applies provides or confers a power to provide different fines or maximum fines in relation to different circumstances or persons of different descriptions, such fines or maximum fines are to be treated separately for the purposes of this section.
- (6) This section also applies where the penalties or maximum penalties provided or for which provision may be made by or under any Act on first and on second or subsequent conviction of an offence have been made the same by operation of section 289E of this Act; and in that case the fine or the maximum fine referred to in subsection (8) below is the maximum fine to which a person is or may be made liable by virtue of that section.
- (7) This section does not apply in the case of—
  - (a) so much of any Act as (in whatever words) makes a person liable or provides for a person to be made liable to a fine or a maximum fine for each period of a specified length during which a continuing offence is committed;
  - (b) section 67(3) of the <sup>M8</sup>Transport Act 1962;

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- (c) sections 40(5) and 44(1) of the <sup>M9</sup>Road Traffic Act 1972;
  - (d) an enactment mentioned in Schedule 1 to the <sup>M10</sup>British Railways Act 1977 to the extent that the enactment was amended by section 13(1) of that Act;
  - (e) an enactment mentioned in Schedule 7D to this Act or in Schedule 2 to the <sup>M11</sup>Criminal Justice Act 1982.
- (8) Where this section applies, the fine or, as the case may be, the maximum fine to which a person is or may be made liable by or under the Act shall be increased to the amount shown in column 2 of the Table below opposite the band in column 1 within which the fine or the maximum fine referred to in subsection (1) above falls.

<i>Column 1</i>	<i>Column 2</i>
<b>Fine or maximum fine</b>	<b>Increased amount</b>
Under £25	£25
Under £50 but not less than £25	£50
Under £200 but not less than £50	£200
Under £400 but not less than £200	£500
Under £1,000 but not less than £400	£1,000

- (9) Where an Act to which this section applies provides or confers a power to provide for, on conviction of an offence triable only summarily, a fine or a maximum fine in respect of a specified quantity or a specified number of things but also provides or confers a power to provide for an alternative fine or maximum fine as regards the offence, subsection (8) above shall have effect to increase—
- (a) the alternative fine; and
  - (b) any amount that the Act provides or confers a power to provide for as the maximum which a fine as regards the offence may not exceed,
- as well as the fine or maximum fine which it has effect to increase by virtue of subsection (4) above.
- (10) This section does not affect the penalty which may be imposed in respect of an offence committed before it comes into force.

#### **Marginal Citations**

**M7** 1977 c. 45(39:1).

**M8** 1962 c. 46(126).

**M9** 1972 c. 20(107:1).

**M10** 1977 c. xvii.

**M11** 1982 c. 48(39:1).

#### **289G The standard scale: amendment of enactments.**

- (1) There shall be a standard scale of fines for offences triable only summarily, which shall be known as “the standard scale”.
- (2) The standard scale is as follows—

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## STANDARD SCALE

<i>Level</i>	<i>Amount</i>
1	[ <sup>F25</sup> £50]
2	[ <sup>F25</sup> £100]
3	[ <sup>F25</sup> £400]
4	[ <sup>F25</sup> £1,000]
5	[ <sup>F25</sup> £2,000].

- (3) Any reference in any enactment (whether passed or made before or after the passing of the Criminal Justice Act 1982) to a specified level on the standard scale shall be construed as referring to the amount which corresponds to that level on the standard scale referred to in subsection (2) above.
- (4) Subject to subsection (8) below, where—
- (a) an enactment to which subsection (5) below applies either—
    - (i) makes a person liable on conviction of an offence triable only summarily (whether created by that enactment or otherwise) to a fine or a maximum fine; or
    - (ii) confers a power by subordinate instrument to make a person liable on conviction of an offence triable only summarily (whether or not created by the instrument) to a fine or a maximum fine;
- and
- (b) the amount of the fine or the maximum fine is, whether by virtue of that enactment or otherwise, an amount shown in the second column of the standard scale,
- for the reference in the enactment to the amount of the fine or maximum fine there shall be substituted a reference to the level on the standard scale shown in the first column thereof as corresponding to the amount in the second column thereof referred to in paragraph (b) above.
- (5) This subsection applies to an enactment in any Act (including this Act) passed before the commencement of this section.
- (6) Subject to subsection (7) below, where an Act provides or confers a power to provide for, on conviction of an offence triable only summarily, a fine or a maximum fine in respect of a specified quantity or a specified number of things, that fine or maximum fine is the fine or, as the case may be, the maximum fine for the purposes of this section.
- (7) Where an Act provides or confers a power to provide for, on conviction of an offence triable only summarily, a fine or a maximum fine in respect of a specified quantity or a specified number of things but also provides or confers a power to provide for an alternative fine or maximum fine as regards the offence, the fine or the maximum fine for the purposes of this section is—
- (a) the alternative fine; and
  - (b) any amount that the Act provides or confers a power to provide for as the maximum which a fine as regards the offence may not exceed,
- as well as the fine or maximum fine referred to in subsection (6) above.

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- (8) Subsection (4) above does not apply to—
- (a) an enactment mentioned in Schedule 2 to the <sup>M12</sup>Companies Act 1980;
  - (b) the <sup>M13</sup>Companies Act 1981; or
  - (c) so much of any Act as (in whatever words) makes a person liable or provides for a person to be made liable to a fine or a maximum fine for each period of a specified length during which a continuing offence is committed.
- (9) Where an enactment to which subsection (5) above applies confers a power such as is mentioned in subsection (4)(a)(ii) above, the power shall be construed as a power to make a person liable to a fine or, as the case may be, a maximum fine of the amount corresponding to the level on the standard scale to which the enactment refers by virtue of subsection (4) above or of a lesser amount.
- <sup>F26</sup>(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,
- <sup>F27</sup>(a) [ 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;
  - <sup>F28</sup>(b) [ under any instrument (however framed or worded) made by virtue of such an enactment,
- a power to provide by subordinate instrument that a person, as regards any summary offence (whether or not created by the instrument) shall be liable on conviction to a fine, a person may be so made liable to a fine not exceeding a specified 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.]

#### Textual Amendments

- F25** Words substituted by [S.I. 1984/526, art. 4](#)
- F26** Words in [S. 69\(1\)](#), as so renumbered, inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117\(1\)](#), [Sch. 6 Pt. I para. 26\(b\)\(i\)](#); [S.I. 1996/517, arts. 3\(2\), 4-6](#), [Sch. 2](#)
- F27** “(a)” inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, [Sch. 8 para. 16](#), [Sch. 15, para. 49\(a\)](#)
- F28** Words substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, [Sch. 8 para. 16](#), [Sch. 15, para. 49\(b\)](#)

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#### Marginal Citations

M12 1980 c. 22(27).

M13 1981 c. 62(27).

### [<sup>F29</sup> 289GB] **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.
- (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) make 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.]

#### Textual Amendments

**F29** Ss. 289GA, 289GB inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 66(2)

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[<sup>F30</sup> **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.
- (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.]

**Textual Amendments**

**F30** Ss. 289GA, 289GB inserted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a), 66(2)**

[<sup>F31</sup> **289GE** Fines under secondary subordinate instruments—Scotland.

- (1) This section applies to any instrument (however framed or worded) which—
  - (a) was made before 11th April 1983 (the date of commencement of Part IV of the Criminal Justice Act 1982);



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- (b) confers on any authority other than a harbour authority a power by subordinate instrument to make a person, as regards any summary offence (whether or not created by the latter instrument), liable on conviction to a maximum fine of a specified amount not exceeding £1,000,
- but does not affect so much of any such instrument as (in whatever words) confers a power by subordinate instrument to make a person liable on conviction to a fine for each period of a specified length during which a continuing offence is continued.
- (2) The maximum fine to which a subordinate instrument made by virtue of an instrument to which this section applies may provide that a person shall be liable on conviction of a summary offence is—
- (a) if the specified amount is less than £25, level 1 on the standard scale;
- (b) if it is £25 or more but less than £50, level 2;
- (c) if it is £50 or more but less than £200, level 3;
- (d) if it is £200 or more but less than £400, level 4; and
- (e) if it is £400 or more, level 5.
- (3) Subject to subsection (5) below, where an instrument to which this section applies confers a power by subordinate instrument to make a person, as regards a summary offence, liable on conviction to a fine in respect of a specified quantity or a specified number of things, that fine shall be treated for the purposes of this section as being the maximum fine to which a person may be made liable by virtue of the instrument.
- (4) Where an instrument to which this section applies confers a power to provide for different maximum fines in relation to different circumstances or persons of different descriptions, the amount specified as those maximum fines are to be treated separately for the purposes of this section.
- (5) Where an instrument to which this section applies confers a power by subordinate instrument to make a person, as regards a summary offence, liable on conviction to a fine in respect of a specified quantity or a specified number of things but also confers a power by subordinate instrument to make a person, as regards such an offence, liable on conviction to an alternative fine, this section shall have effect in relation—
- (a) to the alternative fine; and
- (b) to any amount that the instrument specifies as the maximum fine for which a subordinate instrument made in the exercise of the power conferred by it may provide,
- as well as in relation to the fine mentioned in subsection (3) above,]

#### Textual Amendments

**F31** S. 289GC inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 56(1), [Sch. 8 para. 16](#)

#### [<sup>F32</sup>289GD] **Fines on summary conviction for offences under subordinate instruments—conversion to references to levels on scale.**

- (1) Where an instrument which was made under an enactment on or after 11th April 1983 but before the commencement of section 54 of the Criminal Justice Act 1988 confers on any authority other than a harbour authority a power by subordinate instrument to make a person liable on summary conviction to a fine of an amount shown in the second column of the standard scale, as that scale had effect when the instrument was

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made, a reference to the level in the first column of the standard scale which then corresponded to that amount shall be substituted for the reference in the instrument conferring the power to the amount of the fine.

- (2) This section shall not affect so much of any instrument as (in whatever words) makes a person liable on summary conviction to a maximum fine not exceeding a specified amount for each period of a specified length during which a continuing offence is continued.]

#### Textual Amendments

**F32** S. 289GD inserted by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 54, 172, Sch. 8 para. 16

### 289H Schedule 7D.

- (1) The enactments specified in column 1 of Schedule 7D to this Act, which relate to the penalties or the maximum penalties for the offences mentioned in those enactments, shall be amended in accordance with the amendments specified in column 2 of that Schedule, which have the effect of altering the penalties on summary conviction of the said offences and placing the fines on a level on the standard scale; and in that Schedule column 3 shows the penalties or, as the case may be, maximum penalties in force immediately before the commencement of this section and column 4 shows the penalties or, as the case may be, maximum penalties resulting from the amendments.
- (2) Subsection (1) above does not affect the penalty which may be imposed in respect of an offence committed before it comes into force.

### 290 When six months' imprisonment competent.

Where a person is convicted by the sheriff of—

- (a) a second or subsequent offence inferring dishonest appropriation of property, or attempt thereat, or
- (b) a second or subsequent offence inferring personal violence,

he may, without prejudice to any wider powers conferred by statute, be sentenced to imprisonment for any period not exceeding six months.

### 291 Trial of certain offences.

- (1) ..... <sup>F33</sup>
- (2) It is hereby declared that it is competent to prosecute summarily in the sheriff court the crime of uttering a forged document.
- (3) It is hereby declared that it is competent to prosecute summarily in the sheriff court crimes of [<sup>F34</sup>wilful fire-raising,] robbery and assault with intent to rob.

#### Textual Amendments

**F33** Ss. 289D(3A), 291(1) repealed by Criminal Justice Act 1982 (c. 48, SIF 39:1), Sch. 16

**F34** Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 38

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## **292 Theft outside Scotland.**

- (1) Any person who has in his possession in Scotland property which he has stolen in any other part of the United Kingdom may be dealt with, charged, tried and punished in Scotland in like manner as if he had stolen it in Scotland.
- (2) Any person who in Scotland receives property stolen in any other part of the United Kingdom may be dealt with, charged, tried and punished in Scotland in like manner as if it had been stolen in Scotland.

## **293 Instructions by Lord Advocate as to reporting offences.**

The Lord Advocate may from time to time issue instructions to a chief constable with regard to the reporting, for consideration of the question of prosecution, of offences alleged to have been committed within the area of such chief constable, and it shall be the duty of a chief constable to whom any such instruction is issued to secure compliance therewith.

### *Procedure prior to trial*

## **294 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>F35</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 [<sup>F36</sup>level 3 on the standard scale], and
  - (b) imprisonment for a period—
    - (i) where conviction is in the district court, not exceeding 60 days; or
    - (ii) where conviction is in the sheriff court, 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

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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

**F35** S. 294(2)–(5) substituted for s. 294(2) by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), s. 7(2)

**F36** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), ss. 289G, 457A

#### [<sup>F37</sup>295 Interim liberation by officer in charge of police station.

- (1) Where a person has been arrested and charged with an offence which may be tried summarily, 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.
- (2) A person in breach of an undertaking given by him under subsection (1) above without reasonable excuse shall be guilty of an offence and liable on summary conviction to the following penalties—
- (a) a fine not exceeding [<sup>F38</sup>level 3 on the standard scale]; and
  - (b) imprisonment for a period—
    - (i) where conviction is in the district court, not exceeding 60 days; or
    - (ii) where conviction is in the sheriff court, not exceeding 3 months.
- (3) Subsections (4) and (5) of section 294 of this Act shall, subject to any necessary modifications, apply for the purposes of this section as they apply for the purposes of that section.]

#### Textual Amendments

**F37** S. 295 substituted by [Bail etc. \(Scotland\) Act 1980 \(c. 4\)](#), s. 8

**F38** Words substituted by virtue of [Criminal Procedure \(Scotland\) 1975 \(c. 21, SIF 39:1\)](#), s. 289G

#### Modifications etc. (not altering text)

**C6** S. 295(1) excluded by [Prevention of Terrorism \(Temporary Provisions\) Act 1984 \(c. 8, SIF 39:2\)](#), s. 12(7)

**C7** S. 295(1) excluded by [Prevention of Terrorism \(Temporary Provisions\) Act 1989 \(c. 4, SIF 39:2\)](#), s. 15(8)

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## 296 Police liberation or detention of children arrested.

- (1) Where a person who is apparently a child is apprehended, with or without warrant, and cannot be brought forthwith before a sheriff sitting summarily, a superintendent or inspector of police, or other officer of police of equal or superior rank, or the officer in charge of the police station to which he is brought, shall inquire into the case, and may liberate him on an [<sup>F39</sup>undertaking] that he will attend at the hearing of the charge being entered into by him or his parent or guardian [<sup>F40</sup>; and such undertaking shall be in writing, signed by the child or the parent or guardian as the case may be, and certified by the said officer; and the said officer shall so liberate the child unless—
  - (a) the charge is one of homicide or other grave crime; or
  - (b) it is necessary in his interest to remove him from association with any reputed criminal or prostitute; or
  - (c) the officer has reason to believe that his liberation would defeat the ends of justice.
- (2) Where a person who is apparently a child having been apprehended is not so liberated as aforesaid, the officer of police shall cause him to be detained in a place of safety other than a police station until he can be brought before a sheriff sitting summarily unless the officer certifies—
  - (a) that it is impracticable to do so; or
  - (b) that he is of so unruly a character that he cannot safely be so detained; or
  - (c) that by reason of his state of health or of his mental or bodily condition it is inadvisable so to detain him;and the certificate shall be produced to the court before which he is brought.
- (3) Where a person who is apparently a child has been detained under this section and is not so liberated as aforesaid and it is decided not to proceed with the charge against him a constable shall so inform the reporter of the local authority for the area in which the child is detained, and the child may continue to be detained in a place of safety until the reporter has decided on the course that should be taken with regard to the child under the provisions of Part III of the <sup>M14</sup>Social Work (Scotland) Act 1968.
- (4) A child shall not continue to be detained under this section—
  - (a) where the reporter considers the child does not require compulsory measures of care.
  - (b) after the day on which a children’s hearing first sit to consider his case in pursuance of section 37(4) of the Social Work (Scotland) Act 1968, or
  - (c) for a period exceeding seven days.
- <sup>F41</sup>(5) Any person, who without reasonable excuse is in breach of an undertaking entered into by him under subsection (1) above after having been given due notice of the time and place of the diet . . . <sup>F42</sup>, shall be guilty of an offence, and liable on summary conviction in addition to any other penalty which it is competent for the court to impose on him, to a fine not exceeding [<sup>F43</sup>level 3 on the standard scale].
- (6) In any proceedings relating to an offence under this section, a writing, purporting to be such an undertaking as is mentioned in subsection (1) above and bearing to be signed and certified, shall be sufficient evidence of the undertaking given by the accused.]

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### Textual Amendments

**F39** Word substituted by *Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), s. 9(a)*

*Status: Point in time view as at 23/04/1991. This version of this part contains provisions that are prospective.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1975, Part II is up to date with all changes known to be in force on or before 12 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- F40** Words substituted by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), **s. 9(a)**
- F41** [S. 296\(5\)](#) added by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), **s. 9(b)**
- F42** [S. 127\(5\)](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 44(d)**; S.I. 1996/517, arts. 3(a), 4-6, **Sch. 2**
- F43** [S. 128\(1\)\(1A\)\(1B\)](#) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) for s. 128(1) by 1995 c. 20, **s. 30(2)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

#### Marginal Citations

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

### 297 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>F44</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>F45</sup>]; but a commitment shall not be so revoked unless such conditions as the Secretary of State may by order made by statutory instrument prescribe are satisfied in relation to the child.]

#### Textual Amendments

- F44** Words added (*prosp.*) by [Children Act 1975 \(c. 72, SIF 42:9, 10\)](#), **ss. 70(a)**, 108(2)
- F45** Words added (*prosp.*) by [Children Act 1975 \(c. 72, SIF 49:9,10\)](#), **ss. 70(c)**, 108(2)

### 298 All offences to be bailable.

- (1) All offences shall be bailable, and any judge having jurisdiction to try the offence may, at his discretion, on the application of any person who has been charged with any offence, 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 judge, failing which the accused shall be forthwith liberated.

[<sup>F46</sup>(3) For the avoidance of doubt, 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.]

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**Textual Amendments**

**F46** S. 289(3) added by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 51](#)

**299 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>F47</sup>on different conditions].
- (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) . . . . . <sup>F48</sup>

**Textual Amendments**

**F47** Words substituted by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), [Sch. 1 para. 6](#)

**F48** Ss. 299(5), 301, 302, 303(2)(3) repealed by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), [Sch. 2](#)

**299A 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.

**300 Appeal in respect of bail.**

- (1) Where an application for bail by a person charged with an offence under this Part of this Act is refused or where the applicant is dissatisfied with the amount of bail fixed,

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he may appeal to the High Court and that court may in its discretion order intimation to the prosecutor and, where an application for bail by any such person is granted [F50 or where the person is ordained to appear], the prosecutor, if dissatisfied with the granting of bail or with the amount fixed [F50 or that such person has been ordained to appear] may appeal in like manner and, subject as hereinafter provided, the applicant shall in such case not be liberated before such appeal is disposed of.

- (2) Notice in writing shall be immediately given by the party appealing under this section to the other party.
- (3) 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 the parties as shall seem just.
- (4) When an appeal is taken by the prosecutor under this section 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 order for his further detention in custody. In computing the aforesaid periods, Sundays and public holidays, whether general or court holidays, shall be excluded.
- [F51(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.]
- (5) ..... F52
- (6) Where an appeal under this section by the prosecutor is refused, the High Court may award expenses against him, but no court or other fees shall be exigible from, and no expenses shall be awarded against, an applicant in respect of his application or of any appeal therein.

**Textual Amendments**

**F50** Words inserted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a), 62(4)(a)**

**F51** [S. 69\(2\)](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117\(1\)](#), **Sch. 6 Pt. I para. 26(c)**; [S.I. 1996/517, arts. 3\(2\), 4-6](#), **Sch. 2**

**F52** [S. 72](#) renumbered as [s. 72\(1\)](#) (31.3.1996 subject to transitional provisions in the commencing S.I.) by [1995 c. 20, s. 117\(1\)](#), **Sch. 6 Pt. I para. 27(a)**; [S.I. 1996/517, arts. 3\(2\), 4-6](#), **Sch. 2**

**301,** ..... F53  
**302.**

**Textual Amendments**

**F53** [Ss. 299\(5\), 301, 302, 303\(2\)\(3\)](#) repealed by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), **Sch. 2**



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### 303 Caution and bail.

(1) With regard to the finding, forfeiture, and recovery of caution in any proceedings under this Part of this Act the following provisions shall apply:—

- (a) caution may be found by consignation of the amount with the clerk of court, or by bond of caution, which bond may be signed by the mark of the cautioner;
- (b) where caution becomes liable to forfeiture, forfeiture may be granted by the court on the motion of the prosecutor, and, where necessary, warrant granted for the recovery thereof;
- (c) in the event of any cautioner failing to pay the amount due under his bond within six days after he has received a charge to that effect, the court may order him to be imprisoned for the maximum period applicable in pursuance of section 407 of this Act to that amount or until payment is made; or the court, if it shall adjudge it expedient, may on the application of the cautioner grant time for payment or may instead of imprisonment order recovery by civil diligence in accordance with section 411 of this Act.

(2) ..... <sup>F54</sup>

#### Textual Amendments

**F54** Ss. 299(5), 301, 302, 303(2)(3) repealed by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), Sch. 2

### 304 Power to order parents 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.
- (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.

### 305 Intimation to solicitor.

In any proceedings under this Part of this Act the accused, if [<sup>F55</sup>arrested], shall immediately on [<sup>F55</sup>such arrest] be entitled,

- [<sup>F56</sup>(a)]if he so desires, to have intimation sent to a solicitor, and to have a private interview with such solicitor prior to being brought before the court;
- [<sup>F57</sup>(b) to be told what his rights under paragraph (a) above are.]

#### Textual Amendments

**F55** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 7 para. 52(a)

**F56** Word inserted by virtue of Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 7 para. 52(b)

**F57** S. 305(b) inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 7 para. 52(c)

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### **306 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.

### **307 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 this Part 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.

### **308 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.
- (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.

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### 309 Forms of procedure.

- (1) The forms of procedure under this Part of this Act shall be in the forms set out in Schedule 2 to the <sup>M15</sup>Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournment under this Act or as nearly as may be in such forms.
- (2) Warrants of apprehension and search shall be signed by the judge granting the same, but all other warrants, orders of court, and sentences may be signed either by the judge or by the clerk of court, and execution upon any warrant, order of court, or sentence may proceed either upon such warrant, order of court, or sentence itself or upon an extract thereof issued and signed by the clerk of court.
- (3) Where, as preliminary to any procedure, a sworn information is required, such information may be sworn to before any judge, whether the subsequent procedure be in his court or another court.

#### Marginal Citations

M15 1954 c. 48(39:1).

### 310 Incidental applications.

Where prior to [<sup>F58</sup>or after] the presentation of a complaint it is necessary to apply to a court for any warrant or order of court as incidental to . . . <sup>F59</sup> proceedings by complaint, or where a court has power to grant any warrant or order of court, although no subsequent proceedings by complaint may follow thereon, such application may be by petition at the instance of a prosecutor in the form set out in Part I of Schedule 2 to the <sup>M16</sup>Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournment under this Act or as nearly as may be in such form and, where necessary for the execution of any such warrant or order of court, warrant to break open lockfast places shall be implied.

#### Textual Amendments

**F58** Words inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 53](#)

**F59** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 6 para. 1](#), [Sch. 8](#)

#### Modifications etc. (not altering text)

**C8** S. 310 applied by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), [s. 81\(2\)](#)

**C9** S. 310 extended by [S.I. 1988/110](#), [rules 154\(1\)](#), 156

**C10** S. 310 applied by [S.I. 1986/2184](#), [arts. 2\(1\)](#), 4

**C11** S. 310 applied (31.10.1994) by [1994 c. 26, s. 98\(2\)\(a\)](#); [S.I. 1994/2550](#), [art. 2](#)

#### Marginal Citations

M16 1954 c. 48(39:1).

### 310A Abolition of private summary prosecutions.

Except where any enactment otherwise expressly provides, all prosecutions under this Part of this Act shall be brought at the instance of the procurator fiscal.

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### 311 Complaint.

- (1) All proceedings under this Part of this Act for the trial of offences or recovery of penalties shall be instituted by complaint in the form set out in Part II of Schedule 2 to the <sup>M17</sup>Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act or as nearly as may be in such form.
- (2) Such complaint shall be signed by the prosecutor or by any solicitor on behalf of a prosecutor other than the public prosecutor of a court.
- (3) A solicitor may appear for and conduct any prosecution on behalf of a prosecutor other than the public prosecutor of a court.
- (4) A complaint at the instance of a private prosecutor for an offence at common law or for a statutory offence where imprisonment without the option of a fine is competent shall, unless otherwise provided in any statute, require the concurrence of the public prosecutor of the court in which the complaint is brought.
- (5) Where a complaint includes any statutory charge a notice in the form set out in Form No. 1 of Part III of Schedule 2 to the <sup>M18</sup>Summary Jurisdiction (Scotland) Act 1954 or in the corresponding form set out in an Act of Adjournal under this Act or as nearly as may be in such form shall be served on the accused with the complaint when he is cited to a diet, and where he is in custody the complaint and such a notice shall be served on him before he is asked to plead, and a copy of any notice so served shall, where the judge is satisfied that the charge is proved, be laid before him by the prosecutor, and shall be entered in the record of the proceedings.

#### Modifications etc. (not altering text)

C12 S. 311(5) excluded by Road Traffic Offenders Act 1988 (c. 53, SIF 107:1), ss. 31(2), 32(6)

#### Marginal Citations

M17 1954 c. 48(39:1).

M18 1954 c. 48(39:1).

### 312 Form of the charge in complaint.

The charge in a complaint under this Part of this Act shall be stated in the form, as nearly as may be, of the appropriate form contained in Part II of Schedule 2 to the <sup>M19</sup>Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act. No further specification shall be required than a specification similar to that given in that form and—

- (a) a person accused may be named and designed according to the existing practice, or he may be named by the name given by him and designed as of the place given by him as his residence when he is examined on declaration, and it shall not be necessary to set forth any other name or names by which he may be known, or any other address or designation;
- (b) it shall not be necessary to specify by *anymen juristhe* the offence which is charged, but it shall be sufficient that the complaint sets forth facts relevant and sufficient to constitute an offence punishable on complaint;
- (c) when two or more persons are charged together with committing an offence punishable on complaint, it shall not be necessary to allege that “both and each or one or other,” or that “all and each or one or more” of them committed the

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- offence, or did or failed to do any particular act, but such alternatives shall be implied;
- (d) it shall not be necessary to state that a person accused is “guilty, actor or art and part”, but such charge shall be implied;
  - (e) it shall not be necessary to allege that any act of commission or omission therein charged was done or omitted to be done “wilfully” or “maliciously”, or “wickedly and feloniously”, or “falsely and fraudulently”, or “knowingly”, or “culpably and recklessly”, or “negligently”, or in “breach of duty”, or to use such words as “knowing the same to be forged”, or “having good reason to know”, or “well knowing the same to have been stolen”, or to use any similar words or expressions qualifying any act charged, but such qualifying allegation shall be implied;
  - (f) the latitude in use to be taken in stating time shall be implied in all statements of time where an exact time is not of the essence of the charge, and the latitude in use to be taken in stating any place by adding to the word “at”, or to the word “in”, the words “or near”, or the words “or in the near neighbourhood thereof”, or similar words, shall be implied in all statements of place where the actual place is not of the essence of the charge, and where the circumstances of the offence charged make it necessary to take an exceptional latitude in regard to time or place it shall not be necessary to set forth such circumstances, or to set forth that the particular time or the particular place is to the prosecutor unknown; provided that where exceptional latitude is taken, the court shall, if satisfied that such exceptional latitude was not reasonable in the circumstances of the case, give such remedy to the accused by adjournment of the trial or otherwise as shall seem just;
  - (g) the latitude in use to be taken in describing quantities by the words “or thereby”, or the words “or part thereof”, or the words “or some other quantity to the prosecutor unknown” or similar words, shall be implied in all statements of quantities, and the latitude in use to be taken in stating details connected with the perpetration of any act regarding persons, things or modes by inserting general alternative statements followed by the words “to the prosecutor unknown”, or similar words, shall be implied;
  - (h) where in a complaint, whether raised under statute or at common law, buildings, goods, money, or property of any other description are mentioned, it shall not be necessary to allege the property or possession thereof to be in any person, official, corporation or company, or that the same were not the property of the accused, and the allegation that the same were not the property of the accused shall be implied where it is essential to the criminality of the charge;
  - (i) where in a complaint or any list or inventory relative thereto any person is referred to, it shall be sufficient to describe him by his name and ordinary address, and it shall not be necessary to describe him as “now or lately” residing at such address, but such words shall be implied, and where goods, articles or things require to be described, it shall be sufficient to describe them in general terms without specifying the materials of which they are made, or any particulars which distinguish them from other goods, articles or things of a similar kind except in cases in which such particulars are essential to the constitution of the offence charged;
  - (j) the word “money” shall include all current coin of the realm, post office orders and postal orders, and bank or banker’s notes, and it shall not be necessary to specify in relation to a sum of money whether such sum consisted of gold, silver or other coin, post office orders or postal orders, or bank or banker’s

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notes, or any of them, but it shall be sufficient to state the sum as consisting of money;

- (k) where any document requires to be referred to, it shall not be necessary to set forth the document or any part of it, but it shall be sufficient to refer to such document by a general description;
- (l) criminal resetting of property shall not be limited to the receiving of property taken by theft or robbery, but shall extend to the receiving of property appropriated by breach of trust and embezzlement, and by falsehood fraud and wilful imposition, and under any complaint charging the resetting of property dishonestly appropriated by any of these means, it shall not be necessary to set forth any details of the offence by which the dishonest appropriation was accomplished, but it shall be sufficient to set forth that the accused received such property, it having been dishonestly appropriated by theft or robbery, or by breach of trust and embezzlement, or by falsehood fraud and wilful imposition, as the case may be;
- (m) under a complaint for robbery, or for theft, or for breach of trust and embezzlement, or for falsehood fraud and wilful imposition, a person accused may be convicted of reset; under a complaint for robbery, or for breach of trust and embezzlement, or for falsehood fraud and wilful imposition, a person accused may be convicted of theft; under a complaint for theft, a person accused may be convicted of breach of trust and embezzlement, or of falsehood fraud and wilful imposition, or may be convicted of theft, although the circumstances proved may in law amount to robbery.

The power conferred by the last foregoing paragraph to convict a person of an offence other than the offence charged in a complaint shall be exercisable by the sheriff court before which such person is tried notwithstanding that that other offence was committed outside the jurisdiction of that sheriff court;

- (n) where two or more offences or acts constituting offences are charged cumulatively, it shall be lawful to convict of any one or more of them, and any part of what is charged in a complaint, constituting in itself an offence punishable on complaint, shall be deemed separable to the effect of making it lawful to convict of such offence, and where any offence is charged as having been committed with a particular intent or with particular circumstances of aggravation, it shall be lawful to convict of the offence without such intent or aggravation;
- (o) attempt to commit any offence punishable on complaint shall itself be an offence punishable on complaint, and under a complaint which charges a completed offence the accused may be lawfully convicted of an attempt to commit such offence; and under a complaint charging an attempt, the accused may be convicted of such attempt although the evidence be sufficient to prove the completion of the offence said to have been attempted; and under a complaint charging an offence which imports personal injury inflicted by the accused, resulting in death or serious injury to the person, the accused may be lawfully convicted of the assault or other injurious act, and may also be lawfully convicted of the aggravation that such assault or other injurious act was committed with intent to commit such offence;
- (p) the description of any offence in the words of the statute or order contravened, or in similar words, shall be sufficient;
- (q) the statement that an act was done contrary to a statute or order shall imply a statement that the statute or order applied to the circumstances existing at the time and place of the offence, that the accused was a person bound to

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observe the same, that any necessary preliminary procedure had been duly gone through, and that all the circumstances necessary to a contravention existed; in the case of the contravention of an order, such statement shall imply a statement that the order was duly made, confirmed, published and generally made effectual according to the law applicable, and was in force at the time and place in question;

- (r) where the offence is created by more than one section of one or more statutes or orders, it shall be necessary to specify only the leading section or one of the leading sections;
- (s) it shall not be necessary for an offence punishable under any Act of Parliament to quote the Act of Parliament or any part of it, but it shall be sufficient to allege that the offence was committed contrary to such Act of Parliament, and to refer to the Act and any section of the Act founded on without setting forth the enactment at length;
- (t) where any act set forth in a complaint as contrary to any Act of Parliament is also criminal at common law, or where the facts proved under such a complaint do not amount to a contravention of the statute, but do amount to an offence at common law, it shall be lawful to convict of the common law offence;
- (u) when in a trial the evidence shall be sufficient to prove the identity of any person, corporation or company, or of any place, or of any thing, it shall not be a valid objection to the sufficiency of such evidence that any particulars set forth in regard thereto in the complaint have not been proved;
- (v) any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany in the same section the description of the offence in the statute or order creating the offence, may be proved by the accused, but need not be specified or negatived in the complaint, and no proof in relation to such exception, exemption, proviso, excuse or qualification shall be required on behalf of the prosecution;
- (w) it shall be competent to include in one complaint both common law and statutory charges;
- (x) where an offence is alleged to be committed in any special capacity, as by the holder of a licence, master of a vessel, occupier of a house or the like, the fact that the accused possesses the qualification necessary to the commission of the offence shall, unless challenged by preliminary objection before his plea is recorded, be held as admitted;
- (y) in any proceedings under the Merchant Shipping Acts it shall not be necessary to produce the official register of the ship referred to in the proceedings in order to prove the nationality of the ship, but the nationality of the ship as stated in the complaint shall, in the absence of evidence to the contrary, be presumed;
- (z) in offences inferring dishonest appropriation of property brought before a court whose power to deal with such offences is limited to cases in which the value of such property does not exceed [F61]level 4 on the standard scale] it shall be assumed, and it shall not be necessary to state in the charge, that the value of the property does not exceed that sum.

#### Textual Amendments

- F61** Words in s. 134 substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 47(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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#### Marginal Citations

M19 1954 c. 48(39:1).

### 313 Mode of charging certain offences committed against two or more children under 17.

- (1) Where a person is charged with committing any of the offences mentioned in Schedule 1 to this Act in respect of two or more children under the age of 17 years, the same complaint may charge the offence in respect of all or any of them, but the person charged shall not, if he is convicted, be liable to a separate penalty in respect of each child except upon separate complaints.
- (2) The same complaint may also charge any person as having the custody, charge, or care, alternatively or together, and may charge him with the offences of assault, ill-treatment, neglect, abandonment, or exposure, together or separately, and may charge him with committing all or any of those offences in a manner likely to cause unnecessary suffering or injury to health, alternatively or together, but when those offences are charged together the person charged shall not, if he is convicted, be liable to a separate penalty for each.
- (3) When any offence mentioned in Schedule 1 to this Act charged against any person is a continuous offence, it shall not be necessary to specify in the complaint the date of the acts constituting the offence.

### 314 Orders of court on complaint.

- (1) On any complaint under this Part of this Act being laid before a judge of the court in which the complaint is brought, he shall have power on the motion of the prosecutor—
  - (a) to pronounce an order of court assigning a diet for the disposal of the case to which the accused may be cited as after-mentioned;
  - (b) to grant warrant to apprehend the accused where this appears to the judge expedient;
  - (c) to grant warrant to search the person, dwelling-house and repositories of the accused and any place where he may be found for any documents, articles, or property likely to afford evidence of his guilt of, or guilty participation in, any offence charged in the complaint, and to take possession of such documents, articles or property;
  - (d) to grant any other order of court or warrant or interim order of court of warrant which may be competent in the circumstances.
- (2) The power under the foregoing subsection [F<sup>62</sup> of a judge—
  - (a) to pronounce an order of court assigning a diet for the disposal of the case may be exercised on his behalf by the clerk of court;
  - (b)]
 

to grant a warrant to apprehend the accused shall be exercisable notwithstanding that there is power whether at common law or under any Act to apprehend him without a warrant.
- (3) Where a diet has been fixed in a summary prosecution, it shall be competent for the court, on a joint application in writing by the parties or their solicitors, to discharge the diet so fixed and fix in lieu thereof an earlier . . . F<sup>63</sup> diet.



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- [<sup>F64</sup>(4) Where the prosecutor and the accused make joint application to the court (orally or in writing) for postponement of a diet which has been fixed, the court shall discharge the diet and fix in lieu thereof a later diet unless the court considers that it should not do so because there has been unnecessary delay on the part of one or more of the parties.
- (5) Where the prosecutor has intimated to the accused that he desires to postpone or accelerate a diet which has been fixed, and the accused refuses, or any of the accused refuse, to make a joint application to the court for that purpose, the prosecutor may make an incidental application for that purpose under section 310 of this Act; and, after giving the parties an opportunity to be heard, the court may discharge the diet and fix in lieu thereof a later diet or, as the case may be, an earlier diet.
- (6) Where an accused has intimated to the prosecutor and to all the other accused that he desires such postponement or acceleration and the prosecutor refuses, or any of the other accused refuse, to make a joint application to the court for that purpose, the accused who has so intimated may apply to the court for that purpose; and, after giving the parties an opportunity to be heard, the court may discharge the diet and fix in lieu thereof a later diet or, as the case may be, an earlier diet.]

#### Textual Amendments

**F62** Words inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [s. 11\(a\)](#)

**F63** Words in [s. 134](#) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117\(1\)](#), [Sch. 6 Pt. I para. 47\(b\)](#); [S.I. 1996/517, arts. 3\(2\), 4-6](#), [Sch. 2](#)

**F64** [S. 314\(4\)–\(6\)](#) added by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [s. 11\(c\)](#)

### 315 Citation.

- (1) This Act shall be a sufficient warrant for the citation of the accused and witnesses in a summary prosecution to any ordinary sitting of the court or to any special diet fixed by the court or any adjournment thereof.
- (2) Such citation shall be in the form, as nearly as may be, of the appropriate form contained in Part IV of Schedule 2 to the <sup>M20</sup>Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournment under this Act and shall in the case of the accused proceed on an *induciae* of at least 48 hours unless in the special circumstances of the case the court fixes a shorter *induciae*.
- (3) The foregoing provisions of this section as to the citation of witnesses shall apply to the citation of witnesses for precognition by the prosecutor where a judge on the application of such prosecutor shall deem it expedient to grant warrant to cite witnesses for precognition in regard to any offence which may be competently tried in the court of that judge, and whether or not any person has at the time of such application been charged with such offence.

#### Modifications etc. (not altering text)

**C13** [S. 315](#) extended by [Road Traffic Offenders Act 1988 \(c. 53, SIF 107:1\)](#), [s. 60\(4\)](#)

#### Marginal Citations

**M20** [1954 c. 48\(39:1\)](#).

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### **316 Manner of citation.**

- (1) The citation of the accused and witnesses in a summary prosecution to any ordinary sitting of the court or to any special diet fixed by the court or to any adjourned sitting or diet of such court shall be effected as provided in this section.
- (2) It shall be deemed a legal citation of the accused or a witness to such a sitting or diet or adjourned sitting or diet as is mentioned in the foregoing subsection:—
  - (a) if the citation be delivered to him personally or left for him at his dwelling-house or place of business with some person resident or employed therein or, where he has no known dwelling-house or place of business, at any other place in which he may at the time be resident,
  - (b) where the accused or witness is the master of, or a seaman or person employed in a vessel, if the citation is left with a person on board thereof and connected therewith,
  - (c) where the accused is a company, association or corporation, if the citation is left at their ordinary place of business with a partner, director, secretary or other official, or if the company, association or corporation is cited in the same manner as if the proceedings were in a civil court, or
  - (d) where the accused is a body of trustees, if the citation is left with any one of them who is resident in Scotland or with their known solicitor in Scotland.
- (3) It shall be deemed a legal citation of the accused to such a sitting or diet or adjourned sitting or diet as is mentioned in subsection (1) hereof, if the citation be signed by the prosecutor and sent by post in a registered envelope or through the recorded delivery service to the dwelling-house or place of business of such accused, or, if he has no known dwelling-house or place of business, to any other place in which he may at the time be resident:
 

Provided that, if the accused shall fail to appear at a diet or sitting or adjourned diet or sitting to which he has been cited in the manner provided by this subsection, paragraphs (b) and (c) of section 338 of this Act shall not apply unless it shall have been proved to the court that he received the citation or that the contents thereof came to his knowledge.
- (4) The production in court of any letter or other communication purporting to be written by or on behalf of an accused who has been cited in the manner provided in subsection (3) hereof in such terms as to infer that the contents of such citation came to his knowledge, shall be admissible as evidence of that fact for the purposes of the proviso to that subsection.

### **317 Citation of probationer.**

The citation of a probationer to appear before a court of summary jurisdiction in terms of section 387(1) or 388(1) of this Act shall be effected in like manner, mutatis mutandis, as the citation of an accused to a sitting or diet of the court.

### **318 Citation of offender.**

- (1) The citation of an offender to appear before a court of summary jurisdiction in terms of section 398(2)(a) of this Act shall be effected in like manner, mutatis mutandis, as the citation of an accused to a sitting or diet of the court:

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Provided that the citation shall be signed by the clerk of the court before which the offender is required to appear, instead of by the prosecutor, and provided also that the forms contained in Part IV of Schedule 2 to the <sup>M21</sup>Summary Jurisdiction (Scotland) Act 1954 and the corresponding forms contained in an Act of Adjournal under this Act shall not apply to such citation.

- (2) The citation of such an offender shall be in the appropriate form contained in an Act of Adjournal under this Act, or as nearly as may be in such form.
- (3) If the citation of such an offender shall have been effected by an officer of law, the written execution, if any, of that officer of law shall be in the appropriate form contained in an Act of Adjournal under this Act, or as nearly as may be in such form.

#### Marginal Citations

M21 1954 c. 48(39:1).

### 319 Citation by post.

- (1) When the citation of any person other than a witness is effected by post in terms of any of the foregoing provisions of this Act, the induciae shall be reckoned from 24 hours after the time of posting.
- (2) It shall be sufficient evidence that a citation has been sent by post in terms of any of the foregoing provisions of this Act, if there is produced in court a written execution, signed by the person who signed such citation and in the appropriate form contained in an Act of Adjournal under this Act, or as nearly as may be in such form, together with the post office receipt for the relative registered or recorded delivery letter.

### 320 Apprehension of witness.

Where a witness after being duly cited fails to appear at the diet fixed for his attendance and no just excuse is offered on his behalf, the court may issue a warrant for his apprehension; or the court, if satisfied by evidence on oath that a witness is not likely to attend to give evidence without being compelled so to do, may issue a warrant for his apprehension in the first instance.

#### Modifications etc. (not altering text)

C14 S. 320 applied (10.6.1991) by Criminal Justice (International Co-operation) Act 1990 (c. 5, SIF 39:1), s. 4(6), Sch. 1 para. 2; S.I. 1991/1072, art. 2(a), Sch. Pt. I

### 321 Warrants of apprehension and search.

- (1) A warrant of apprehension or search may be in the form, as nearly as may be, of the appropriate form contained in Part IV of Schedule 2 to the <sup>M22</sup>Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act, and any warrant of apprehension or search shall, where it is necessary for its execution, imply warrant to officers of law to break open shut and lockfast places.

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- (2) A warrant of apprehension of an accused person in such form as aforesaid shall imply warrant to officers of law to search for and to apprehend the accused, and to bring him before the court issuing the warrant, or before any other court competent to deal with the case, to answer to the charge on which such warrant is granted, and, in the meantime, until he can be so brought to detain him in a police station house, police cell, or other convenient place.
- (3) A person apprehended under any such warrant as aforesaid or by virtue of the powers possessed at common law, or conferred by statute, shall wherever practicable be brought before a court competent to deal with the case either by way of trial or by way of remit to another court not later than in the course of the first . . . <sup>F65</sup> day after such person shall be taken into custody, such day not being a [<sup>F66</sup>Saturday, a Sunday or a court holiday prescribed for that court under section 10 of the <sup>M23</sup>Bail etc. (Scotland) Act 1980:]
- [<sup>F66</sup>Provided that nothing in this subsection shall prevent such person being brought before the court on a Saturday, a Sunday or such a court holiday where the court is, in pursuance of the said section 10, sitting on such day for the disposal of criminal business.]
- (4) A warrant of apprehension or other warrant shall not be required for the purpose of bringing before the court an accused person who had been apprehended without a written warrant or who attends without apprehension in answer to any charge made against him.
- (5) A warrant of apprehension of a witness in the appropriate form shall imply warrant to officers of law to search for and apprehend the witness, and to detain him in a police station house, police cell, or other convenient place, until the date fixed for the hearing of the case, unless sufficient security be found to the amount fixed in the warrant for the appearance of such witness at all diets of court.

#### Textual Amendments

**F65** Word repealed by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 2**

**F66** Words substituted by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 1 para. 7**

#### Modifications etc. (not altering text)

**C15** S. 321(3) excluded (*temp.* to 22.3.1991) by Prevention of Terrorism (Temporary Provisions) Act 1989 (c. 4, SIF 39:2), s. 15(7)(a) and S.I. 1990/683, **art. 3**

#### Marginal Citations

**M22** 1954 c. 48(39:1).

**M23** 1980 c. 4(39:1).

### 322 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>F67</sup>section 18, 38(7) or 138 of the <sup>M24</sup>Mental Health Act 1983], [<sup>F68</sup>section 28, 44 or 121 of the

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- <sup>M25</sup>Mental Health (Scotland) Act 1984] or section 30 or 108 of the <sup>M26</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, 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>F69</sup>Section 137 of the <sup>M27</sup>Mental Health Act 1983], [<sup>F70</sup>section 120 of the <sup>M28</sup>Mental Health (Scotland) Act 1984] and section 107 of the <sup>M29</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>F69</sup>the said Act of 1983], [<sup>F70</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>F71</sup>Part III of the <sup>M30</sup>Mental Health Act 1983, [<sup>F72</sup>Part VI of the <sup>M31</sup>Mental Health (Scotland) Act 1984]], Part III of the <sup>M32</sup>Mental Health Act (Northern Ireland) 1961 or section 330, 376, 378 or 379 of this Act in pursuance of a hospital order or transfer direction together with an order or direction restricting his discharge [<sup>F73</sup>or a person liable to be detained under][<sup>F71</sup>section 38 to the said Act of 1983];
- “place of safety” has the same meaning as in [<sup>F71</sup>Part II 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>M33</sup>Prison Act 1952, the <sup>M34</sup>Prisons (Scotland) Act 1952 or the <sup>M35</sup>Prison Act (Northern Ireland) 1953, as the case may be.

#### Textual Amendments

- F67** Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), s. 148, [Sch. 4 para. 41\(a\)](#)
- F68** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(1), [Sch. 3 para. 30\(a\)](#)
- F69** Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), s. 148, [Sch. 4 para. 41\(b\)](#)
- F70** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(1), [Sch. 3 para. 30\(b\)](#)
- F71** Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), s. 148, [Sch. 4 para. 41\(c\)](#)
- F72** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(1), [Sch. 3 para. 30\(c\)](#)
- F73** Words inserted by [Mental Health \(Amendment\) Act 1982 \(c. 51, SIF 85\)](#), Sch. 3 para. 51(b), [Sch. 5 para. 1](#)

#### Marginal Citations

- M24** [1983 c. 20\(85\)](#).
- M25** [1984 c. 36\(85\)](#).
- M26** [1961 c. 15 \(N.I.\)](#)
- M27** [1983 c. 20\(85\)](#).
- M28** [1984 c. 36\(85\)](#).
- M29** [1961 c. 15 \(N.I.\)](#)
- M30** [1983 c. 20\(85\)](#).

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- M31** 1984 c. 36(85).
- M32** 1961 c. 15 (N.I.)
- M33** 1952 c. 52(39:1).
- M34** 1952 c. 61(39:1).
- M35** 1953 c. 18 (N.I.)

### 323 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>M36</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)

- C16** S. 323 amended by Adoption (Scotland) Act 1978 (c. 28, SIF 49:11), ss. 37(1), and Foster Children (Scotland) Act 1984 (c. 56, SIF 20), s. 13

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**Marginal Citations**

M36 1968 c. 49(81:3).

**324 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>M37</sup>Summary Jurisdiction (Process) Act 1881 applies.

**Marginal Citations**

M37 1881 c. 24(36:3, 82).

**325** ..... <sup>F74</sup>

**Textual Amendments**

F74 S. 325 repealed by [Criminal Law Act 1977 \(c. 45, SIF 39:1\)](#), [Sch. 13](#)

**326 Service of complaints, etc.**

- (1) Any complaint, warrant, or other proceeding under this Part of this Act may without endorsement be served or executed at any place within Scotland by any officer of law, and such service or execution may be proved either by the oath in court of such officer or by production of his written execution. The <sup>M38</sup>Indictable Offences Act 1848 and the <sup>M39</sup>Indictable Offences Act Amendment Act 1868 shall, for the purpose of this Part of this Act, apply to all offences which may be tried by the court issuing any competent warrant, order of court, or other process.
- (2) ..... <sup>F75</sup>

**Textual Amendments**

F75 S. 326(2) repealed by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), s. 154(3), [Sch. 9](#)

**Marginal Citations**

M38 1848 c. 42(39:1).

M39 1868 c. 107(39:1).

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

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

*Status: Point in time view as at 23/04/1991. This version of this part contains provisions that are prospective.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1975, Part II is up to date with all changes known to be in force on or before 12 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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.

### 328 Adjournment for inquiry, etc.

A court of summary jurisdiction, in order to allow time for inquiry into any case, or for any other necessary cause, and without calling on the accused to plead to any charge against him, may from time to time continue the case for such reasonable time as may in the circumstances be necessary, not exceeding in all a period of seven days, or on special cause shown 21 days, from the date of the apprehension of the accused, and may liberate him on bail [<sup>F76</sup>, ordain him to appear] or commit him to prison, either without bail or with bail to an amount fixed by the court:

Provided that no judge shall be entitled to allow bail [<sup>F77</sup> or to ordain a person to appear] in a case which he is not competent to try.

#### Textual Amendments

**F76** S. 76(1)(bb) inserted (18.9.1993) by 1993 c. 9, s. 39(2)(a) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), Sch. 2

**F77** Words in s. 76(1)(c) substituted (18.9.1993) by 1993 c. 9, s. 39(2)(b) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), Sch. 2

### 329 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 [<sup>F78</sup> or ordained to appear], 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 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 [<sup>F79</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) 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



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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 <sup>F80</sup>; but a commitment shall not be so revoked unless such conditions as the Secretary of State may by order made by statutory instrument prescribe are satisfied in relation to the said person.]
- (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.

#### Textual Amendments

- F78** Words in s. 76(7)(c) inserted (18.9.1993) by 1993 c. 9, s. 39(3) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), Sch. 2
- F79** Words added (*prosp.*) by Children Act 1975 (c. 72, SIF 42:9, 10), ss. 70(a), 108(2) which addition falls by reason of the repeal on 14.10.1991 of the said 1975 Act by the Children Act 1989 (c. 41, SIF 20), s. 108(7) Sch. 15; S.I. 1991/828, art. 3(2)
- F80** Words added (*prosp.*) by Children Act 1975 (c. 72, SIF 42:9, 10), ss. 70(b), 108(2) which addition falls by reason of the repeal on 14.10.1991 of the said 1975 Act by the Children Act 1989 (c. 41, SIF 20), s. 108(7) Sch. 15; S.I. 1991/828, art. 3(2)

### 330 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>F81</sup>Part V of the <sup>M40</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.

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- (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

**F81** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(1), **Sch. 3 para. 31**

#### Marginal Citations

**M40** [1984 c. 36\(85\)](#).

### 331 Statutory offences time-limit.

- (1) Proceedings under this Part of this Act in respect of the contravention of any statute or order shall, unless the statute or order under which the proceedings are brought fixes any other period, be commenced within six months after the contravention occurred and, in the case of a continuous contravention, within six months after the last date of such contravention, and it shall be competent in such case in any prosecution to include the entire period during which the contravention has occurred.
- (2) A person shall not be summarily convicted of an offence mentioned in paragraph (d) of Schedule 1 to this Act unless the offence was wholly or partly committed within six months before the proceedings against him in respect of the offence were commenced; but, subject as aforesaid, evidence may be taken of acts constituting, or contributing to, the offence and committed at any previous time.
- (3) For the purposes of this section proceedings shall be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted, if such warrant is executed without undue delay.

### [<sup>F83</sup>331A Prevention of delay in trials.

- (1) Subject to subsections (2) and (3) below, a person charged with a summary offence shall not be detained in that respect for a total of more than forty days after the bringing of the complaint in court unless his trial is commenced within that period, failing which he shall be liberated forthwith and thereafter he shall be for ever free from all question or process for that offence.
- (2) The sheriff may, on application made to him for the purpose, extend the period mentioned in subsection (1) above and order the accused to be detained awaiting trial for such period as he thinks fit where he is satisfied that delay in the commencement of the trial is due to—
  - (a) the illness of the accused or of a judge;
  - (b) the absence or illness of any necessary witness; or
  - (c) any other sufficient cause which is not attributable to any fault on the part of the prosecutor.
- (3) The grant or refusal of any application to extend the period mentioned in subsection (1) above may be appealed against by note of appeal presented to the High Court; and that Court may affirm, reverse or amend the determination made on such application.
- (4) For the purposes of this section, a trial shall be taken to commence when the first witness is sworn.]

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### Textual Amendments

**F83** S. 331A inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 14(2), [Sch. 6 para. 1](#)

## **331B Death, illness or absence of judge.**

- (1) Where the court is unable to proceed owing to the death, illness or absence of the presiding judge, it shall be lawful for the clerk of court—
  - (a) where the diet has not been called, to convene the court and adjourn the diet;
  - (b) where the diet has been called but no evidence has been led, to adjourn the diet; and
  - (c) where the diet has been called and evidence has been led—
    - (i) with the agreement of the parties, to desert the diet pro loco et tempore; or
    - (ii) to adjourn the diet.
- (2) Where, under subsection (1)(c)(i) above, a diet has been deserted pro loco et tempore, any new prosecution charging the accused with the same or any similar offence arising out of the same facts shall be brought within two months of the date on which the diet was deserted notwithstanding that any other time limit for the commencement of such prosecution has elapsed.
- (3) For the purposes of subsection (2) above, a new prosecution shall be deemed to commence on the date on which a warrant to apprehend or to cite the accused is granted, if such warrant is executed without undue delay.

## **332 Power to recover penalties.**

- (1) All penalties, for the recovery of which no special provision has been made by statute or order, may be recovered by the public prosecutor in any court having jurisdiction.
- (2) Where a court has power to take cognisance of an offence the penalty attached to which is not defined, the punishment therefore shall be regulated by that applicable to common law offences in that court.

## **333 Offences by companies, etc.**

With regard to the summary prosecution of offences committed by a company, association, incorporation or body of trustees, the following provisions shall, without prejudice to any other or wider powers conferred by statute, apply:—

- (a) proceedings may be taken against the company, association, incorporation or body of trustees in their corporate capacity, and in that event any penalty imposed shall be recovered by civil diligence in manner hereinafter provided; or
- (b) proceedings may be taken against an individual representative of such company, association or incorporation as follows:—
  - (i) in the case of an ordinary company or firm, any one of the partners thereof, or the manager or the person in charge or locally in charge of the affairs thereof, may be dealt with as if he was the person offending;
  - (ii) in the case of an association, incorporation or incorporated company, the managing director or the secretary or other person in charge, or

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locally in charge, of the affairs thereof, may be dealt with as if he was the person offending;

- (iii) the offence shall be deemed to be the offence of such company, association or incorporation.

**333A** <sup>F85</sup> **Adjournment for inquiry at first calling.**

Without prejudice to section 338(1) of this Act, at the first calling of the case in a summary prosecution the court may, in order to allow time for inquiry into the case or for any other cause which it considers reasonable, adjourn the case under this section, for such period as it considers appropriate, without calling on the accused to plead to any charge against him but remanding him in custody or on bail or ordaining him to appear at the diet thus fixed; and the court may from time to time so adjourn the case, so however that—

- (a) where the accused is remanded in custody, the total period for which he is so remanded under this subsection shall not exceed twenty-one days and no one period of adjournment shall, except on special cause shown, exceed seven days; and
- (b) where he is remanded on bail or ordained to appear, no one period of adjournment shall exceed twenty eight days.

**333B** **Agreement of evidence.**

- (1) Subject to subsection (2) below, the prosecutor and the accused (or each accused if more than one) shall each identify any facts which are facts—
  - (a) which he would, apart from this section, be seeking to prove;
  - (b) which he considers unlikely to be disputed by the other party (or by any of the other parties); and
  - (c) in proof of which he does not wish to lead oral evidence,
 and shall (without prejudice to section 16 of the Criminal Justice (Scotland) Act 1995 (procedure for proving uncontroversial evidence)) take all reasonable steps to secure the agreement of the other party (or each of the other parties) to them; and the other party (or each of the other parties) shall take all reasonable steps to reach such agreement.
- (2) Subsection (1) above shall not apply in relation to proceedings as respects which the accused (or any of the accused if more than one) is not legally represented.
- (3) The duty under subsection (1) above applies from the date on which the accused pleads not guilty until the swearing of the first witness or, where the accused tenders a plea of guilty at any time before the first witness is sworn, the date when he does so.

*Trial Procedure*

**334** **Procedure at first diet, etc.**

- (1) Where the accused is present at the first calling of the case in a summary prosecution, and—
  - (a) the complaint has been served on him, or
  - (b) the complaint or the substance thereof has been read to him, or
  - (c) he has legal assistance in his defence,

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he shall be asked to plead in common form, and he may, prior to pleading, state [<sup>F87</sup>an objection to the competency or relevancy of the complaint or the proceedings or issue a denial that he is the person charged by the police with the offence; and no such objection or denial shall be allowed to be stated or issued] at any future diet in the case except with the leave of the court, which may be granted only on cause shown.

[<sup>F88</sup>(2) In the absence of the accused, an objection to the competency or relevancy of a summary complaint or the proceedings thereon may be stated, or a denial that the accused is the person charged by the police with the offence may be issued, by counsel or by a solicitor on his behalf; and where such an objection is stated or denial is issued, the provisions of this Part of this Act shall apply in like manner as if the accused had appeared and stated the objection or issued the denial.]

[<sup>F89</sup>(2A) Without prejudice to any right of appeal under section 442 or 453A of this Act, a party may, with the leave of the court (granted either on the motion of that party or ex proprio motu) and in accordance with such procedure as may be prescribed by Act of Adjournal under this Act, appeal to the High Court against a decision of the court of first instance (other than a decision not to grant leave under this subsection) which relates to such objection or denial as is mentioned in subsection (1) above; but such appeal must be taken not later than two days after such decision.

(2B) Where an appeal is taken under subsection (2A) above, the High Court may postpone the trial diet (if one has been fixed) for such period as appears to them to be appropriate and may, if they think fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.

(2C) If leave to appeal under subsection (2A) above is granted by the court it shall not proceed to trial at once under paragraph (a) of section 337 of this Act; and paragraph (b) of that section shall be construed as requiring sufficient time to be allowed for the appeal to be taken.

(2D) In disposing of an appeal under subsection (2A) above the High Court may affirm the decision of the court of first instance or may remit the case to it with such directions in the matter as they think fit; and where the court of first instance had dismissed the complaint, or any part of it, may reverse that decision and direct that the court of first instance fix a trial diet (if it has not already fixed one as regards so much of the complaint as it has not dismissed.)]

(3) Where the accused is not present at a calling of the case in a summary prosecution and either—

- (a) the prosecutor produces to the court written intimation that the accused pleads not guilty or pleads guilty and the court is satisfied that such written intimation has been made or authorised by the accused, or
- (b) a solicitor, or a person not being a solicitor who satisfies the court that he is authorised by the accused, appears on behalf of the accused and tenders a plea of not guilty or a plea of guilty,

then—

- (i) in the case of a plea of not guilty, the provisions of this Part of this Act except paragraph (a) of section 337 shall apply in like manner as if the accused had appeared and tendered the plea, and
- (ii) in the case of a plea of guilty, the court may, if the prosecutor accepts the plea, proceed to hear and dispose of the case in the absence of the accused in like manner as if he had appeared and pled guilty, or may, if it thinks fit, continue

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the case to another diet and require the attendance of the accused with a view to pronouncing sentence in his presence.

(4) Where in pursuance of paragraph (ii) of the last foregoing subsection the court proceeds to hear and dispose of a case in the absence of the accused, it shall not pronounce a sentence of imprisonment or of Borstal training or of detention in a detention centre, young offenders institution, remand centre, or other establishment.

(5) In this section a reference to a plea of guilty shall include a reference to a plea of guilty to a part only of the charge:

Provided that where such a plea is not accepted by the prosecutor it shall be deemed to be a plea of not guilty.

(6) It shall not be competent for any person appearing to answer a complaint, or for a solicitor appearing for the accused in his absence, to plead want of due citation or informality therein or in the execution thereof.

#### Textual Amendments

**F87** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 1, [Sch. 7 para. 54\(a\)](#)

**F88** S. 334(2) substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 1, [Sch. 7 para. 54\(b\)](#)

**F89** S. 334(2A)–(2D) inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 36, [Sch. 6 para. 1](#)

### 335 Amendment of complaint.

(1) It shall be competent at any time prior to the determination of a summary prosecution, unless the court sees just cause to the contrary, to amend the complaint or any notice of penalty or previous conviction relative thereto by deletion, alteration or addition so as to cure any error or defect therein, or to meet any objection thereto, or to cure any discrepancy or variance between the complaint or notice and the evidence.

(2) Nothing in this section shall authorise an amendment which changes the character of the offence charged, and if the court shall be of opinion that the accused may in any way be prejudiced in his defence on the merits of the case by any amendment made under this section, the court shall grant such remedy to the accused by adjournment or otherwise as it shall think just.

(3) An amendment made under this section shall be sufficiently authenticated by the initials of the clerk of court.

### 336 Plea of guilty.

Where the accused in a summary prosecution pleads guilty to the charge or to any part thereof, and his plea is accepted by the prosecutor, the plea shall be recorded and signed by the judge or clerk of court, and the court shall thereafter dispose of the case at the same or any adjourned diet. The plea and sentence may be combined, in which case one signature shall be sufficient to authenticate both.

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### 337 Plea of not guilty.

Where the accused in a summary prosecution pleads not guilty to the charge or guilty to part only thereof, and the prosecutor does not accept such partial plea, the following provisions shall apply:—

- (a) the court may proceed to trial at once unless either party moves for an adjournment and the court shall adjudge it expedient to grant it; . . . <sup>F90</sup>
- (b) the court may adjourn the case for trial to as early a diet as is consistent with the just interest of both parties, in which case the prosecutor shall, if requested by the accused, furnish him with a copy of the complaint if he does not already have one;
- (c) where the accused is brought before the court by apprehension he shall be entitled to an adjournment of the case for not less than 48 hours, if the request for such adjournment is made before the prosecutor has commenced his proof, and the court shall inform the accused of his right to such adjournment:

Provided that the case may proceed to trial at once or on a shorter adjournment than 48 hours if the court considers that necessary to secure the examination of witnesses who otherwise would not be available;

- (d) where the accused is in custody, he may be committed to prison or to legalised police cells or to any other place to which he may lawfully be committed pending trial
  - [<sup>F91</sup>(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 deposited in court, until the accused or a cautioner on his behalf has so deposited that sum.]
- (e) . . . <sup>F92</sup>
- (f) the court may from time to time, and at any stage of the case, on the motion of either party or ex proprio motu grant such adjournment as may be necessary for the proper conduct of the case, and where from any cause a diet has to be continued from day to day it shall not be necessary to intimate such continuation to the accused;
- (g) it shall not be necessary for the prosecutor to establish a charge or part of a charge to which the accused pleads guilty;
- (h) the court may, in any case where it considers such a course expedient, permit any witness for the defence to be examined prior to evidence for the prosecution having been led or concluded, but in any such case the accused shall be entitled to lead additional evidence after the case for the prosecution is closed.

#### Textual Amendments

**F90** Word repealed by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), [Sch. 2](#)

**F91** [S. 337\(d\)\(i\)\(ii\)](#) substituted for words by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), [ss. 47\(4\)\(a\)](#), [62\(3\)](#)

**F92** [S. 337\(e\)](#) repealed by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), [Sch. 2](#) and [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 8](#)

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### [<sup>F93</sup>337A Intermediate diet.

- [ The court may, when adjourning a case for trial in terms of section 337(b) of this Act, <sup>F94</sup>(1) and may also, at any time thereafter, whether before, on or after any date assigned as a trial diet, fix a diet (to be known as an intermediate diet) for the purpose of ascertaining—
- (a) the state of preparation of the prosecutor and of the accused with respect to their cases; and
  - (b) whether the accused intends to adhere to the plea of not guilty.]
- (2) At an intermediate diet, the court may ask the prosecutor and the accused any question for the purposes mentioned in subsection (1) above.
- (3) The accused shall attend an intermediate diet of which he has received intimation or to which he has been cited.
- (4) A plea of guilty may be tendered at the intermediate diet; and section 336 of this Act shall apply accordingly.]

#### Textual Amendments

**F93** S. 337A added by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 15, [Sch. 6 para. 1](#)

**F94** S. 337A(1) substituted (*retrospectively*) by virtue of [1998 c. 10, s. 1\(3\)](#)

### 337B Removal of accused from court.

- (1) Without prejudice to section 338 of this Act, and subject to subsection (2) below, no part of a trial shall take place outwith the presence of the accused.
- (2) If during the course of his trial an accused so misconducts himself that in the view of the court a proper trial cannot take place unless he is removed, the court may order—
  - (a) that he is removed from the court for so long as his conduct makes it necessary; and
  - (b) that the trial proceeds in his absence,
 but if he is not legally represented the court shall appoint counsel or a solicitor to represent his interests during such absence.

### 338 Failure of accused to appear.

- [<sup>F96</sup>(1)] Where the accused in a summary prosecution fails to appear at any diet of which he has received intimation, or to which he has been cited, the following provisions shall apply:—
- (a) the court may adjourn the trial to another diet, and order the accused to attend at such diet, and appoint intimation thereof to be made to him, which intimation shall be sufficiently given by an officer of law, or by letter signed by the prosecutor and sent to the accused at his last known address by registered post or by the recorded delivery service, and the production in court of the written execution of such officer or of an acknowledgment or certificate of the delivery of the letter issued by the Post Office shall be sufficient evidence of such intimation having been duly given;
  - (b) where the accused is charged with any statutory offence for which a sentence of imprisonment cannot be imposed in the first instance, or where the statute



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founded on or conferring jurisdiction authorises procedure in the absence of the accused, the court may, on the motion of the prosecutor and upon proof that the accused has been duly cited, or has received due intimation of the diet where such intimation has been ordered, proceed to hear and dispose of the case in the absence of the accused. Unless the statute founded on authorises conviction in default of appearance, proof of the complaint must be led to the satisfaction of the court. The court in any case to which this paragraph applies may, if it shall judge it expedient, allow any solicitor who satisfies the court that he has authority from the accused so to do, to appear and plead for and defend him;

- (c) the court may grant warrant to apprehend the accused;
- (d) .....<sup>F97</sup>

[<sup>F98</sup>(2) An accused who without reasonable excuse fails to attend any diet of which he has been given due notice, shall be guilty of an offence and liable on summary conviction—

- (a) to a fine not exceeding [<sup>F99</sup>level 3 on the standard scale]; and
- (b) to a period of imprisonment not exceeding—
  - (i) in the district court, 60 days; or
  - (ii) in the sheriff court, 3 months.

(3) The penalties provided for in subsection (2) 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.

(4) An accused may be dealt with for an offence under subsection (2) above either at his diet of trial for the original offence or at a separate diet.]

**Textual Amendments**

- F96** Word inserted by virtue of [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), s. 17](#)
- F97** [S. 338\(d\)](#) repealed by [Bail etc. \(Scotland\) Act 1980 \(c. 4\), Sch. 2](#)
- F98** [S. 338\(2\)–\(4\)](#) inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), s. 17, Sch. 6 para. 1](#)
- F99** Words substituted by virtue of [Criminal Procedure \(Scotland\) 1975 \(c. 21, SIF 39:1\), s. 289G](#)

[<sup>F100</sup>**338A** Desertion of trial diet.

- (1) It shall be competent at the diet of trial, at any time before the first witness is sworn, for the court, on the application of the prosecutor, to desert the diet *pro loco et tempore*.
- (2) If, at a diet of trial, the court refuses an application by the prosecutor to adjourn the trial or to desert the diet *pro loco et tempore*, and the prosecutor is unable or unwilling to proceed with the trial, the court shall desert the diet *simpliciter*.
- (3) Where the court has deserted a diet *simpliciter* under subsection (2) above (and the court's decision in that regard has not been reversed on appeal), it shall not be competent for the prosecutor to raise a fresh libel.]

**Textual Amendments**

- F100** [S. 338A](#) added by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), s. 18\(2\), Sch. 6 para. 2](#)

*Status: Point in time view as at 23/04/1991. This version of this part contains provisions that are prospective.*

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### 339 Alibi.

It shall not be competent for the accused in a summary prosecution to found on a plea of alibi unless he gives, prior to the examination of the first witness for the prosecution, notice to the prosecutor of the plea with particulars as to time and place and of the witnesses by whom it is proposed to prove it. The prosecutor, on such notice being given, shall be entitled, if he so desires, to an adjournment of the case.

### 340 Examination of witness.

In any trial, it shall be competent for the party against whom a witness is produced and sworn in causa to examine such witness, not in cross only, but also in causa.

### 341 Witnesses not to be excluded by reason of conviction, interest, etc.

- (1) No person adduced as a witness shall be excluded from giving evidence by reason of having been convicted of or having suffered punishment for crime, or by reason of interest, or by reason of agency or of partial counsel, or by reason of having appeared without citation or without having been duly cited to attend, or by reason of having been precognosced subsequently to the date of citation.
- (2) Every person so adduced, who is not otherwise by law disqualified from giving evidence, shall be admissible as a witness, notwithstanding any objection offered on any of the above-mentioned grounds.
- (3) Nothing in this section shall prevent such witness from being examined on any point tending to affect his credibility.
- (4) Where any person who is or has been an agent of the accused shall be adduced and examined as a witness for the accused, it shall not be competent to the accused to object, on the ground of confidentiality, to any question proposed to be put to such witness on matter pertinent to the issue of the guilt of the accused.

### 342 Witnesses admissible notwithstanding relationship to parties.

It shall be no objection to the admissibility of any witness that he or she is the father, mother, son, daughter, brother or sister, by consanguinity or affinity, or uncle, aunt, nephew or niece, by consanguinity, of any party adducing such witness in any trial; nor shall it be competent to any witness to decline to be examined and give evidence on the ground of any such relationship.

### [<sup>F101</sup>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.]

#### Textual Amendments

**F101** S. 342A inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 63

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### 343 Presence in court not to disqualify witnesses in certain cases.

In any trial, the court need not reject any witness against whom it is objected that he has, without the permission of the court, and without the consent of the party objecting, been present in court during the proceedings; but the court may, in its discretion, admit the witness, where it appears to the court that the presence of the witness was not the result of culpable negligence or criminal intent, and that the witness has not been unduly instructed or influenced by what took place during his presence, or that injustice will not be done by his examination.

### 344 Punishment of witness for contempt.

- (1) If a witness in a summary prosecution shall wilfully fail to attend after being duly cited, or unlawfully refuse to be sworn, or after the oath has been administered to him refuse to answer any question which the court may allow, or to produce documents in his possession when required by the court, or shall prevaricate in his evidence, he shall be deemed guilty of contempt of court and be liable to be summarily punished forthwith for such contempt by a fine not exceeding [<sup>F102</sup>level 3 on the standard scale] or by imprisonment for any period not exceeding [<sup>F103</sup>21 days].
- (2) Where such punishment as aforesaid is summarily imposed, the clerk of court shall enter in the record of the proceedings the acts constituting the contempt or the statements forming the prevarication.
- (3) The foregoing provisions of this section shall be without prejudice to the prosecutor proceeding by way of formal complaint for any such contempt where such summary punishment, as above mentioned, is not imposed.
- (4) Any witness who, after being duly cited in accordance with section 315 of this Act—
  - (a) fails without reasonable excuse, after receiving at least [<sup>F104</sup>48] hours' notice, to attend for precognition by a prosecutor at the time and place mentioned in the citation served on him, or
  - (b) refuses when so cited to give information within his knowledge regarding any matter relative to the commission of the offence in relation to which such precognition is taken,shall be liable to the like punishment as is provided in the foregoing provisions of this section.

#### Textual Amendments

**F102** S. 338(d) repealed by [Bail etc. \(Scotland\) Act 1980 \(c. 4\)](#), [Sch. 2](#)

**F103** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62\)](#), s. 46(1)(c), [Sch. 6 para. 1](#)

**F104** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62\)](#), SIF 39:1), [Sch. 6 para. 1](#), [Sch. 7 para. 55](#)

### 345 Administration of oath to same witness in case at same diet.

Where a witness in a summary prosecution is examined on oath in a case in which the accused is charged with an offence under any statute, and where the same witness is examined at the same diet in subsequent cause against the same or different persons accused of offences under the same statute, it shall not be necessary for the judge to

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administer the oath to the witness in the subsequent cases, but it shall be sufficient that the judge shall remind him in each case that he is still on oath.

**[<sup>F105</sup>345A] No case to answer.**

- (1) Immediately after the close of the evidence for the prosecution, the accused may intimate to the court his desire to make a submission that he has no case to answer both—
  - (a) on an offence charged in the complaint; and
  - (b) on any other offence of which he could be convicted under the complaint were the offence charged the only offence so charged.
- (2) If, after hearing both parties, the court is satisfied that the evidence led by the prosecution is insufficient in law to justify the accused being convicted of the offence charged in respect of which the submission has been made or of such other offence as is mentioned, in relation to that offence, in paragraph (b) of subsection (1) above, it shall acquit him of the offence charged in respect of which the submission has been made, and the trial shall proceed only in respect of any other offence charged in the complaint.
- (3) If, after hearing both parties, the court is not satisfied as is mentioned in subsection (2) above, it shall reject the submission and the trial shall proceed, with the accused entitled to give evidence and call witnesses, as if such submission had not been made.]

**Textual Amendments**

**F105** S. 345A inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 19(2), [Sch. 6 para. 2](#)

**346 Accused and spouse competent witnesses for defence.**

[<sup>F106</sup>(1)] The accused . . . <sup>F107</sup> shall be [<sup>F108</sup>a competent witness] for the defence at every stage of the case, whether the accused is on trial alone or along with a co-accused:

Provided that—

- (a) the accused shall not be called as a witness in pursuance of this section except upon his own application [<sup>F109</sup>or in accordance with subsection (2) or (3) below];
- (b) the failure of the accused . . . <sup>F107</sup> to give evidence shall not be commented upon by the prosecution;
- (c) . . . . . <sup>F110</sup>
- (e) the accused who gives evidence on his own behalf in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged;
- (f) the accused who gives evidence on his own behalf in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless—
  - (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged; or

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- (ii) the accused or his counsel or solicitor has asked questions of the witnesses for the prosecution with a view to establish the accused's good character, or the accused has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of the witnesses for the prosecution; or
  - (iii) the accused has given evidence against any other person charged [<sup>F111</sup>in the same proceedings];
- (g) every person called as a witness in pursuance of this section . . . <sup>F107</sup> shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence.
- [<sup>F112</sup>(2) The accused may—
- (a) with the consent of a co-accused, call that other accused as a witness on the accused's behalf; or
  - (b) ask a co-accused any question in cross-examination if that co-accused gives evidence,
- but he may not do both in relation to the same co-accused.
- (3) The prosecutor or the accused may call as a witness a co-accused who has pleaded guilty to [<sup>F113</sup>or been acquitted of] all charges against him which remain before the court (whether or not [<sup>F114</sup>in a case where the co-accused has pleaded guilty to any charge,] he has been sentenced) [<sup>F115</sup>or in respect of whom the diet has been deserted]; and the party calling such co-accused as a witness shall not require to give notice thereof, but the court may grant any other party such adjournment or postponement of the trial as may seem just.]

#### Textual Amendments

**F106** S. 338(2)–(4) inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 17, **Sch. 6 para. 1**

**F107** Words substituted by virtue of Criminal Procedure (Scotland) 1975 (c. 21, SIF 39:1), **s. 289G**

**F108** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 56**

**F109** Words in s. 338(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 120**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

**F110** S. 346(1) proviso paras. (c)(d) repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 8**

**F111** Words in s. 339 substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 121**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

**F112** S. 346(2)(3) added by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 28(c), **Sch. 6 para. 1**

**F113** Words in s. 79(1) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 31**; S.I. 1996/517, arts. 3(2), 4-6, Sch. 2

**F114** S. 80 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 9, **Sch. 6 para. 1**

**F115** Words in s. 80(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 32**; S.I. 1996/517, arts. 3(2), 4-6, Sch. 2

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**[<sup>F116</sup>346A Evidence in relation to sexual offences.**

- (1) In any trial of a person on any charge to which this section applies, subject to section 346B, the court shall not admit, or allow questioning designed to elicit, evidence which shows or tends to show that the complainer—
- (a) is not of good character in relation to sexual matters;
  - (b) is a prostitute or an associate of prostitutes; or
  - (c) has at any time engaged with any person in sexual behaviour not forming part of the subject matter of the charge.
- (2) This section applies to a charge of committing or, in the case of paragraphs (b) to (g), attempting to commit any of the following offences, that is to say—
- (a) attempted rape;
  - (b) sodomy;
  - (c) assault with intent to rape;
  - (d) indecent assault;
  - (e) indecent behaviour (including any lewd, indecent or libidinous practice or behaviour);
  - (f) an offence under any of the following provisions of the <sup>M41</sup>Sexual Offences (Scotland) Act 1976—
    - (i) section 2 (procuring by threats, etc.);
    - (ii) section 3(2) (unlawful sexual intercourse with girl under 13);
    - (iii) section 4 (unlawful sexual intercourse with girl under 16);
    - (iv) section 5 (indecent behaviour towards girl between 12 and 16);
    - (v) section 8 (abduction of girl under 18);
    - (vi) section 9 (unlawful detention of female); or
  - (g) an offence under section 80(7) of the <sup>M42</sup>Criminal Justice (Scotland) Act 1980 (homosexual offences).
- (3) In this section, “complainer” means the person against whom the offence referred to in subsection (2) above is alleged to have been committed.
- (4) This section does not apply to questioning, or evidence being adduced, by the Crown.]

**Textual Amendments**

**F116** S. 346A, 346B inserted by [Law Reform \(Miscellaneous Provisions\) Act 1985 \(c. 73, SIF 39:1\)](#), s. 36(2), [Sch. 3 para. 1](#)

**Marginal Citations**

**M41** 1976 c. 67(39:5).

**M42** 1980 c. 62(39:1).

**346ZA Evidence of criminal record and character of accused.**

- (1) This section applies where—
- (a) evidence is led by the defence, or the defence asks questions of a witness for the prosecution, with a view to establishing the accused’s good character or impugning the character of the prosecutor, of any witness for the prosecution or of the complainer; or

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- (b) the nature or conduct of the defence is such as to tend to establish the accused's good character or to involve imputations on the character of the prosecutor, of any witness for the prosecution or of the complainer.
- (2) Where this section applies the court may, without prejudice to section 350 of this Act, on the application of the prosecutor, permit the prosecutor to lead evidence that the accused has committed, or has been convicted of, or has been charged with, offences other than that for which he is being tried, or is of bad character.
- (3) In subsection (1) above, references to the complainer include references to a victim who is deceased.

### **346B Exceptions to prohibition.**

- (1) Notwithstanding the terms of section 346A above, in any trial of a person on any charge to which that section applies, where the court is satisfied on an application by that person—
- (a) that the questioning or evidence referred to in section 346A(1) above is designed to explain or rebut evidence adduced, or to be adduced, otherwise than by or on behalf of that person,
  - (b) that the questioning or evidence referred to in section 346A(1)(c) above—
    - (i) is questioning or evidence as to sexual behaviour which took place on the same occasion as the sexual behaviour forming the subject matter of the charge, or
    - (ii) is relevant to the defence of incrimination, or
  - (c) that it would be contrary to the interests of justice to exclude the questioning or evidence referred to in section 346A(1) above,
- the court shall allow such questioning or, as the case may be, admit such evidence.
- (2) Where questioning or evidence is or has been allowed or admitted under this section, the court may at any time limit as it thinks fit the extent of that questioning or evidence.
- (3) Any application under this section shall be made in the course of the trial but in the absence of the complainer, any person cited as a witness and the public.

### **347 Evidence of accused.**

Where the only witness to the facts of the case called by the defence is the accused, he shall be called as a witness immediately after the close of the evidence for the prosecution.

### **[<sup>F118</sup>348 Spouse to be competent witness.**

- (1) The spouse of a person charged with an offence may be called as a witness—
- (a) by that person;
  - (b) by a co-accused or by the prosecutor without the consent of that person.
- (2) Nothing in this section shall—
- (a) make the spouse of an accused a compellable witness for a co-accused or for the prosecutor in a case where such spouse would not be so compellable at common law;

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- (b) compel a spouse to disclose any communication made between the spouses during the marriage.
- (3) The failure of the spouse of an accused to give evidence shall not be commented on by the defence or the prosecutor.]

#### Textual Amendments

**F118** S. 348 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 29, [Sch. 6 para. 1](#)

### **349 Witness may be examined etc., as to having previously made a different statement.**

In any trial, any witness may be examined as to whether he has on any specified occasion made a statement on any matter pertinent to the issue at the trial different from the evidence given by him in such trial; and in such trial evidence may be led to prove that such witness has made such different statement on the occasion specified.

#### [<sup>F119</sup>**349A Recall of witnesses.**

—In any trial, on the motion of either party, the presiding judge may permit a witness who has been examined to be recalled.]

#### Textual Amendments

**F119** S. 349A inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 73(2)

#### [<sup>F120</sup>**350 Additional evidence.**

- (1) The judge may, on a motion of the prosecutor or defence made after the close of that party's evidence and before the prosecutor proceeds to address the judge on the evidence, permit that party to lead additional evidence; but such permission shall only be granted where the judge—
  - (a) considers that the additional evidence is *prima facie* material; and
  - (b) accepts that at the time the party's evidence was closed either—
    - (i) the additional evidence was not available and could not reasonably have been made available; or
    - (ii) the materiality of such additional evidence could not reasonably have been foreseen by the party.
- (2) The judge may permit the additional evidence to be led notwithstanding that a witness must be recalled.
- (3) The judge may, when granting a motion in terms of this section, adjourn or postpone the trial before permitting the additional evidence to be led.]

#### Textual Amendments

**F120** Ss. 350, 350A substituted for s. 350 by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 30(2), [Sch. 6 para. 2](#)



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### 350A Evidence in replication.

- (1) The judge may, on a motion of the prosecutor made after the close of the defence evidence and before the prosecutor proceeds to address the judge on the evidence, permit the prosecutor to lead additional evidence, for the purpose of—
  - (a) contradicting evidence, [<sup>F121</sup>given by any defence witness], which could not reasonably have been anticipated by the prosecutor; or
  - (b) providing such proof as is mentioned in section 349 of this Act.
- (2) The judge may permit the additional evidence to be led notwithstanding that a witness must be recalled.
- (3) The judge may, when granting a motion in terms of this section, adjourn or postpone the trial before permitting the additional evidence to be led.

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#### Textual Amendments

**F121** Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 39:1\)](#), s. 37

### 351 Defence to speak last.

In any trial, the accused or, where he is legally represented, his counsel or solicitor shall have the right to speak last.

### [<sup>F122</sup>352 Record of proceedings at examination to be received in evidence without being sworn to by witnesses.

- (1) Subject to subsection (2) below, the record made, under section 20B of this Act (with any rectification, authorised under subsection (4) of that section, incorporated), of proceedings at the examination of an accused shall be received in evidence without being sworn to by witnesses.
- (2) Subject to section 20B(2) of this Act and to subsection (4) below, on the application of either an accused or the prosecutor, the court may refuse to admit the record or some part of the record as evidence; and at the hearing of such application it shall be competent for the defence to adduce as witnesses the persons who were present during the proceedings mentioned in subsection (1) above and for the defence and for the prosecutor to examine those witnesses upon any matters regarding the said proceedings.
- (3) “Record” in subsection (2) above comprises, as regards any trial, each record which it is sought to have received in evidence under subsection (1) above.
- (4) Except on cause shown, an application under subsection (2) above shall not be heard unless notice of at least 10 clear days has been given to the court and to the other parties.]

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#### Textual Amendments

**F122** S. 352 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 6(4), [Sch. 6 para. 1](#)

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### **353 Proof of official documents.**

- (1) Any letter, minute or other official document issuing from the office or in the custody of any of the departments of state or government in the United Kingdom the production of which in evidence is required in any summary prosecution, and which according to the rules and regulations applicable to such departments may be competently produced, shall when produced be received as prima facie evidence of the matters contained in it without being produced or sworn to by any witness, and a copy thereof bearing to be certified by any person having authority to certify the same shall be treated as equivalent to the original, and no proof of the signature of the person certifying such copy, or of his authority to certify it, shall be necessary.
- (2) Any order by any of the departments of state or government or any local authority or public body made under powers conferred by any statute, or a print or copy of such order, shall when produced in a summary prosecution be received in evidence of the due making, confirmation, and existence of such order without being sworn to by any witness and without any further or other proof, but without prejudice to any right competent to the accused to challenge any such order as being ultra vires of the authority making it or on any other competent ground, and where any such order is referred to in the complaint it shall not be necessary to enter it in the record of the proceedings as a documentary production.
- (3) The provisions contained in this section shall be deemed to be in addition to, and not in derogation of, any powers of proving documents conferred by statute, or existing at common law.

### **354 Admissions by parties.**

- (1) It shall not be necessary in any summary prosecution for either party to lead proof of any fact which is admitted by the opposite party, or to prove any documents the terms and application of which are not in dispute, and copies of any documents may, by agreement of the parties, be accepted as equivalent to the originals:

Provided that this subsection shall not apply unless the accused has legal assistance in his defence.

- (2) Admissions or agreements under the foregoing subsection may be made by lodging with the clerk of court a minute signed by the person or persons making the same or by his or their counsel or solicitor, and any facts and documents so admitted or agreed shall be accepted as if they had been duly proved.

### **355 Judges equally divided.**

In a summary prosecution in a court consisting of more than one judge, if the judges are equally divided in opinion as to the guilt of the accused, the accused shall be found not guilty of the charge or part thereof on which such division of opinion exists.

### **356 Previous convictions.**

- (1) A previous conviction may not be libelled as an aggravation of an offence.
- (2) Where a person is convicted of an offence, the court may have regard to any previous conviction in respect of that person in deciding on the disposal of the case.

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- (3) Nothing in this section shall affect the sentence which a court may pass on a second or subsequent conviction.

### **357 Laying of previous convictions before court.**

- (1) Where the accused in a summary prosecution has been previously convicted of any offence and the prosecutor has decided to lay a previous conviction before the court, the following provisions shall have effect:—
- (a) a notice in the form, as nearly as may be, of Form No. 2 or 3 of Part III of Schedule 2 to the <sup>M43</sup>Summary Jurisdiction (Scotland) Act 1954 or of the appropriate form in an Act of Adjournal under this Act setting forth the previous conviction shall be served on the accused with the complaint where he is cited to a diet, and where he is in custody the complaint and such a notice shall be served on him before he is asked to plead;
  - (b) the previous conviction shall not be laid before the judge until he is satisfied that the charge is proved;
  - (c) if a plea of guilty is tendered or if, after a plea of not guilty, the accused is convicted the prosecutor shall lay the notice referred to in paragraph (a) of this subsection before the judge, and
    - [<sup>F123</sup>(i) in a case where the plea of guilty is tendered in writing the accused shall be deemed to admit any previous conviction set forth in the notice, unless he expressly denies it in the writing by which that plea is tendered;
    - (ii) in any other case the judge or the clerk of court shall ask the accused whether he admits the previous conviction,
- and if such admission is made or deemed to be made it shall be entered in the record of the proceedings.]
- (d) it shall not be necessary for the prosecutor to produce extracts of any previous convictions so admitted;
  - (e) where the accused does not admit any such previous conviction, the prosecutor unless he withdraws the conviction shall adduce evidence in proof thereof either then or at any other diet;
  - (f) a copy of any notice served on the accused under this subsection shall be entered in the record of the proceedings.
- (2) A conviction, or an extract conviction of any offence committed in any part of the United Kingdom, bearing to be under the hand of the officer in use to give out such extract conviction, shall be received in evidence without being sworn to by witnesses. An official of any prison in which the accused may have been confined on such conviction shall be a competent and sufficient witness to prove the application thereof to the accused, although such official may not have been present in court at the trial to which such conviction relates. This provision shall be without prejudice to any other competent mode of proving a conviction and the application thereof to the accused.
- (3) Where in any court a book of record is kept of the convictions in the court containing the like particulars as are inserted in an extract conviction, and where at the end of each day's proceedings the entries in such book are certified as correct by the judge or clerk of court, such entries shall, in any proceeding in that court, be accepted as evidence of such convictions.

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- (4) Where the accused in a summary prosecution is convicted of any offence and also of any aggravation by previous conviction, and is again accused of any offence in regard to which such conviction may be competently used as an aggravation, the production of the prior conviction, or an extract thereof, setting forth the particulars of the previous convictions therein libelled, shall be admissible and sufficient evidence to prove against the accused all the previous convictions and aggravations therein set forth.
- (5) Nothing in this section shall prevent evidence of previous convictions being led in causa where such evidence is competent in support of a substantive charge.

#### Textual Amendments

**F123** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 40, **Sch. 6 para. 1**

#### Modifications etc. (not altering text)

**C46** [S. 357\(1\)](#) excluded by [Road Traffic Offenders Act 1988 \(c. 53, SIF 107:1\)](#), **ss. 31(2), 32(6)**

#### Marginal Citations

**M43** [1954 c. 48\(39:1\)](#).

### 358 Proof of previous convictions by fingerprints.

- (1) A previous conviction may be proved against any person in any criminal proceedings by the production of such evidence of the conviction as is mentioned in this section and by showing that his fingerprints and those of the person convicted are the fingerprints of the same person.
- (2) A certificate purporting to be signed by or on behalf of the Chief Constable of Strathclyde or the Commissioner of Police of the Metropolis, containing particulars relating to a conviction extracted from the criminal records kept by the person by or on whose behalf the certificate is signed, and certifying that the copies of the fingerprints contained in the certificate are copies of the fingerprints appearing from the said records to have been taken in pursuance of regulations for the time being in force under section 11 of the <sup>M44</sup>Prisons (Scotland) Act 1952, or under section 16 of the <sup>M45</sup>Prison Act 1952, from the person convicted on the occasion of the conviction or on the occasion of his last conviction, shall be sufficient evidence of the conviction or, as the case may be, of his last conviction and of all preceding convictions and that the copies of the fingerprints produced on the certificate are copies of the fingerprints of the person convicted.
- (3) Where a person has been apprehended and detained in the custody of the police in connection with any criminal proceedings, a certificate purporting to be signed by the chief constable concerned or a person authorised on his behalf, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.
- (4) A certificate purporting to be signed by or on behalf of the governor of a prison or of a remand centre in which any person has been detained in connection with any criminal proceedings, certifying that the fingerprints produced thereon were taken from him

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while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.

- (5) A certificate purporting to be signed by or on behalf of the Chief Constable of Strathclyde, and certifying that the fingerprints, copies of which are certified as aforesaid by or on behalf of the Chief Constable or the Commissioner of Police of the Metropolis to be copies of the fingerprints of a person previously convicted and the fingerprints certified by or on behalf of a chief constable or a governor as aforesaid, or otherwise shown, to be the fingerprints of the person against whom the previous conviction is sought to be proved, are the fingerprints of the same person, shall be sufficient evidence of the matter so certified.
- (6) The method of proving a previous conviction authorised by this section shall be in addition to any other method of proving the conviction.

**Marginal Citations**

**M44** 1952 c. 52(39:1).

**M45** 1952 c. 61(39:1).

**359 Record.**

Proceedings in a summary prosecution shall be conducted summarily viva voce and, except where otherwise provided, no record need be kept of the proceedings other than the complaint, the plea, a note of any documentary evidence produced, and the conviction and sentence or other finding of the court:

Provided that any objections taken to the competency or relevancy of the complaint or proceedings, or to the competency or admissibility of evidence, shall, if either party desires it, be entered in the record of the proceedings.

**360 Proceedings written or printed.**

Proceedings in a summary prosecution may be either in writing or printed, or may be partly written and partly printed, and all forms bearing reference to any antecedent form may be either on the same sheet of paper therewith or on a separate sheet attached to it.

*<sup>F124</sup>Interruption of proceedings*

**<sup>F125</sup>360A Interruption of summary proceedings for verdict in earlier trial.**

- (1) Where the sheriff is sitting in any summary proceedings during the period in which the jury in any criminal trial in which he has presided are retired to consider their verdict, it shall be lawful, if he considers it appropriate to do so, to interrupt those proceedings—
- (a) in order to receive the verdict of the jury and dispose of the cause to which it relates;
  - (b) to give a direction to the jury on any matter on which they may wish one from him, or to hear a request from them regarding any matter, as for example that a production may be made available for examination by them,

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and the interruption shall not affect the validity of the proceedings nor cause the instance to fall in respect of any person accused in the proceedings.

- (2) Subsection (5) of section 156 of this Act shall apply in respect of the interruption of summary proceedings as it applies in respect of the interruption of a trial.

### *Procedure at trial involving children*

#### **361 Child under 14 not to be in court during trial of another person.**

No child under 14 years of age (other than an infant in arms) shall be permitted to be present in court during the trial of any other person charged with an offence, or during any proceedings preliminary thereto, except during such time as his presence is required as a witness or otherwise for the purposes of justice; and any child present in court when under this section he is not to be permitted to be so shall be ordered to be removed:

Provided that this section shall not apply to messengers, clerks, and other persons required to attend at any court for purposes connected with their employment.

#### **362 Power to clear court while child is giving evidence in certain cases.**

- (1) Where, in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, a person who, in the opinion of the court, is a child is called as a witness, the court may direct that all or any persons, not being members or officers of the court or parties to the case, their counsel or solicitors, or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of that witness:

Provided that nothing in this section shall authorise the exclusion of bona fide representatives of a newspaper or news agency.

- (2) The powers conferred on a court by this section shall be in addition and without prejudice to any other powers of the court to hear proceedings in camera.

#### **363 Power to proceed with case in absence of person under 17.**

Where, in any proceedings relating to any of the offences mentioned in Schedule 1 to this Act, the court is satisfied that the attendance before the court of any person under the age of 17 years in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of that person.

#### **364 Power of court, in respect of certain offences against a child, to refer child to reporter.**

Any court by or before which a person is convicted of having [<sup>F126</sup>committed any offence—

- (a) under section 21 of the <sup>M46</sup>Children and Young Persons (Scotland) Act 1937;
- (b) mentioned in Schedule 1 to this Act; or
- (c) in respect of a female person aged 17 years or over which constitutes the crime of incest,

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may refer—

- (i) the child in respect of whom the offence referred to in paragraph (a) or (b) above has been committed; or
- (ii) any child who is, or who is likely to become, a member of the same household as the person who has committed the offence mentioned in paragraph (b) or (c) above,

to the reporter] of the local authority in whose area the child resides and certify that the said offence shall be a ground established for the purposes of Part III of the<sup>M47</sup> Social Work (Scotland) Act 1968.

**Textual Amendments**

**F126** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 57](#)

**Marginal Citations**

**M46** [1937 c. 37\(20\)](#).

**M47** [1968 c. 49\(81:3\)](#).

**365** ..... **F127**

**Textual Amendments**

**F127** [S. 365](#) repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 8](#)

**366 Procedure when sheriff sits summarily in respect of offence by child.**

- (1) Where summary proceedings are brought in respect of an offence alleged to have been committed by a child, the sheriff shall sit either in a different building or room from that in which he usually sits or on different days from those on which other courts in the building are engaged in criminal proceedings: and no person shall be present at any sitting to which this subsection applies except—
  - (a) members and officers of the court;
  - (b) parties to the case before the court, their solicitors and counsel, and witnesses and other persons directly concerned in that case;
  - (c) bona fide representatives of newspapers or news agencies;
  - (d) such other persons as the court may specially authorise to be present.
- (2) The power to make rules conferred on the High Court under section 457 of this Act shall include power to make rules as respects the procedure in cases to which the foregoing subsection applies.

**367 Powers of sheriff sitting summarily.**

- (1) A sheriff sitting summarily for the purpose of hearing a charge against, or an application relating to, a person who is believed to be a child may, if he thinks fit to do so, proceed with the hearing and determination of the charge or application, notwithstanding that it is discovered that the person in question is not a child.

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- (2) When a sheriff sitting summarily has remanded a child for information to be obtained with respect to him, any sheriff sitting summarily in the same place—
  - (a) may in his absence extend the period for which he is remanded so, however that he appears before a sheriff or a justice at least once in every two days;
  - (b) when the required information has been obtained, may deal with him finally; and where the sheriff by whom he was originally remanded has recorded a finding that he is guilty of an offence charged against him, it shall not be necessary for any court which subsequently deals with him under this subsection to hear evidence as to the commission of that offence, except in so far as it may consider that such evidence will assist the court in determining the manner in which he should be dealt with.
- (3) Any direction in any enactment that a charge shall be brought before a juvenile court shall be construed as a direction that he shall be brought before the sheriff sitting as a court of summary jurisdiction, and no such direction shall be construed as restricting the powers of any justice or justices to entertain an application for bail or for a remand, and to hear such evidence as may be necessary for that purpose.

### **368 Presumption and determination of age of child.**

- (1) Where a person charged with an offence is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a child, the court shall make due inquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case, but an order or judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court, and the age presumed or declared by the court to be the age of the person so brought before it shall, for the purposes of this Act or the <sup>M48</sup>Children and Young Persons (Scotland) Act 1937, be deemed to be the true age of that person, and, where it appears to the court that the person so brought before it has attained the age of 17 years, that person shall for the purposes of this Act or the <sup>M49</sup>Children and Young Persons (Scotland) Act 1937 be deemed not to be a child.
- (2) The court in making any inquiry in pursuance of the foregoing subsection shall have regard to the application of the provisions of section 30(1) of the <sup>M50</sup>Social Work (Scotland) Act 1968 but an order or judgment of the court shall not be invalidated by any subsequent proof that the court was not informed that at the material time the person was subject to a supervision requirement or that his case had been referred to a children's hearing under Part V of that Act.
- (3) Where in any complaint in respect of any offence under the <sup>M51</sup>Children and Young Persons (Scotland) Act 1937 or any of the offences mentioned in [<sup>F128</sup>paragraphs [<sup>F129</sup>(c)][<sup>F130</sup>(d) and (e)] of Schedule 1 to this Act or any offence under section [<sup>F131</sup>2A,] 11(1) to (3) or 14 of the <sup>M52</sup>Sexual Offences (Scotland) Act 1976], it is alleged that the person by or in respect of whom the offence was committed was a child or was under or had attained any specified age, and he appears to the court to have been at the date of the commission of the alleged offence a child, or to have been under or to have attained the specified age, as the case may be, he shall for the purposes of this Act or the <sup>M53</sup>Children and Young Persons (Scotland) Act 1937 [<sup>F128</sup>or the <sup>M54</sup>Sexual Offences (Scotland) Act 1976 be presumed] at that date to have been a child or to have been under or to have attained that age, as the case may be, unless the contrary is proved.
- (4) Where, in any complaint in respect of any offence under the <sup>M55</sup>Children and Young Persons (Scotland) Act 1937 or any of the offences mentioned in Schedule 1 to this Act, it is alleged that the person in respect of whom the offence was committed was



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a child or was a young person, it shall not be a defence to prove that the person alleged to have been a child was a young person or the person alleged to have been a young person was a child in any case where the acts constituting the alleged offence would equally have been an offence if committed in respect of a young person or child respectively.

- (5) Where a person is charged with an offence under the <sup>M56</sup>Children and Young Persons (Scotland) Act 1937 in respect of a person apparently under a specified age, it shall be a defence to prove that the person was actually of or over that age.
- (6) In subsection (3) of this section, references to a child (other than a child charged with an offence) shall be construed as references to a child under the age of 17 years; but except as aforesaid references in this section to a child shall be construed as references to a child within the meaning of section 462 of this Act.

#### Textual Amendments

**F128** Words substituted by [Sexual Offences \(Scotland\) Act 1976 \(c. 67, SIF 39:5\)](#), **Sch. 1**

**F129** Words “(c) and” substituted by virtue of the [Incest and Related Offences \(Scotland\) Act 1986 \(c. 36, SIF 39:5\)](#), s. 3(2), **Sch. 1 para. 3**

**F130** Words “(d) and (e)” substituted for words “and (d)” by virtue of the [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, Sch. 8 para. 16, **Sch. 15 para. 48**

**F131** Words inserted by [Incest and Related Offences \(Scotland\) Act 1986 \(c. 36, SIF 39:5\)](#), s. 3(2), **Sch. 1 para. 3**

#### Marginal Citations

**M48** 1937 c. 37(20).

**M49** 1937 c. 37(20).

**M50** 1968 c. 49(81:3).

**M51** 1937 c. 37(20).

**M52** 1976 c. 67(39:5).

**M53** 1937 c. 37(20).

**M54** 1976 c. 67(39:5).

**M55** 1937 c. 37(20).

**M56** 1937 c. 37(20).

### 369 Age of criminal responsibility.

It shall be conclusively presumed that no child under the age of eight years can be guilty of any offence.

### 370 Child charged jointly with person who is not a child.

When a child has been charged with an offence jointly with a person who is not a child the provisions of sections 366 [<sup>F132</sup>and 367] of this Act shall not apply to summary proceedings before the sheriff in respect of the charges.

#### Textual Amendments

**F132** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **Sch. 7 para. 58**

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### **371 Welfare of child.**

Every court in dealing with a child who is brought before it as an offender shall have regard to the welfare of the child and shall in a proper case take steps for removing him from undesirable surroundings.

### **372 Reference and remit of children’s cases by courts to children’s hearings.**

- (1) Where a child who is not subject to a supervision requirement is charged with an offence and pleads guilty to, or is found guilty of, that offence the court—
  - (a) instead of making an order on that plea or finding, may remit the case to the reporter of the local authority to arrange for the disposal of the case by a children’s hearing; or
  - (b) on that plea or finding may request the reporter of the local authority to arrange a children’s hearing for the purposes of obtaining their advice as to the treatment of the child.
- (2) Where a court has acted in pursuance of paragraph (b) of the foregoing subsection, the court, after consideration of the advice received from the children’s hearing may, as it thinks proper, itself dispose of the case or remit the case as aforesaid.
- (3) Where a child who is subject to a supervision requirement is charged with an offence and pleads guilty to, or is found guilty of, that offence the court shall request the reporter of the local authority to arrange a children’s hearing for the purpose of obtaining their advice as to the treatment of the child, and on consideration of that advice may, as it thinks proper, itself dispose of the case or remit the case as aforesaid.
- (4) Where a court has remitted a case to the reporter under this or the next following section, the jurisdiction of the court in respect of the child or person shall cease, and his case shall stand referred to a children’s hearing.
- (5) Nothing in the provisions of this or the next following section shall apply to a case in respect of an offence the sentence for which is fixed by law.

### **373 Reference and remit of cases of certain young persons by courts to children’s hearings.**

Where a person who is not subject to a supervision requirement but is a person over the age of 16, and is not within six months of attaining the age of 18, is charged summarily with an offence and pleads guilty to, or has been found guilty of, that offence the court on that plea or finding may request the reporter of the local authority to arrange a children’s hearing for the purpose of obtaining their advice as to the treatment of the person, and on consideration of that advice, the court may, as it thinks proper, itself dispose of the case or, where the hearing have so advised, remit the case to the reporter of the local authority for the disposal of the case by a children’s hearing.

### **[<sup>F133</sup>374 Restrictions on report of proceedings involving person under 16.**

- (1) No newspaper report of any proceedings in a court shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any person under the age of 16 years concerned in the proceedings, either—
  - (a) as being a person against or in respect of whom the proceedings are taken; or
  - (b) as being a witness therein;

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nor shall any picture which is, or includes, a picture of a person under the age of 16 years so concerned in the proceedings be published in any newspaper in a context relevant to the proceedings:

Provided that, in any case—

- (i) where the person is concerned in the proceedings as a witness only and no one against whom the proceedings are taken is under the age of 16 years, the foregoing provisions of this subsection shall not apply unless the court so directs;
  - (ii) the court may at any stage of the proceedings if satisfied that it is in the public interest so to do, direct that the requirements of this section (including such requirements as applied by a direction under paragraph (i) above) shall be dispensed with to such extent as the court may specify;
  - (iii) the Secretary of State may, after completion of the proceedings, if so satisfied by order dispense with the said requirements to such extent as may be specified in the order.
- (2) This section shall, with the necessary modifications, apply in relation to sound and television [<sup>F134</sup>programmes included in a programme service (within the meaning of the Broadcasting Act 1990)] as it applies in relation to newspapers.
  - (3) A person who publishes matter in contravention of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding [<sup>F135</sup>level 4 on the standard scale.]
  - (4) In this section, references to a court shall not include a court in England, Wales or Northern Ireland.]

#### Textual Amendments

**F133** S. 374 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 22, Sch. 6 para. 2

**F134** Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1), Sch. 20 para. 21

**F135** Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 46, (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289G and (N.I.) 1984/703, (N.I. 13), art. 5

### *Procedure at Trial of Persons suffering from Mental Disorder*

#### **375 Insanity in bar of trial.**

- (1) Subject to the following provisions of this section, any rule of law relating to insanity standing in bar of trial shall apply in the case of a person charged summarily in the sheriff court as it would apply if that person were charged on indictment.
- (2) Where, in the case of any person charged summarily in the sheriff court, the court is satisfied that the person is insane so that the trial of that person cannot proceed, the court shall direct a finding to that effect, and the reasons for that finding, to be recorded, and shall deal with him in the manner provided by section 376(2) of this Act.
- (3) It shall not be competent for a person charged as aforesaid to found on a plea of insanity standing in bar of trial unless, before the first witness for the prosecution is called, he gives notice to the prosecutor of the plea and of the witnesses by whom he proposes to maintain it; and where notice as aforesaid has been given, the court shall, if the prosecutor so moves, adjourn the case.

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- (4) Where it appears to a court that it is not practicable or appropriate for the accused to be brought before it for the purpose of determining whether he is insane so that his trial cannot proceed, then, if no objection to such a course is taken by or on behalf of the accused, the court may order that the case be proceeded with in his absence.

### **375ZA Examination of facts.**

- (1) At an examination of facts ordered under section 375(2)(b) of this Act the court shall, on the basis of the evidence (if any) already given in the trial and such evidence, or further evidence, as may be led by either party, determine whether it is satisfied—
- (a) beyond reasonable doubt, as respects any charge in a complaint in respect of which the accused was being or was to be tried, that he did the act or made the omission constituting the offence; and
  - (b) on the balance of probabilities, that there are no grounds for acquitting him.
- (2) Where the court is satisfied as mentioned in subsection (1) above, it shall make a finding to that effect.
- (3) Where the court is not so satisfied it shall, subject to subsection (4) below, acquit the person of the charge.
- (4) Where, as respects a person acquitted under subsection (3) above, the court is satisfied as to the matter mentioned in subsection (1)(a) above but it appears to the court that the person was insane at the time of doing the act or making the omission constituting the offence, the court shall state whether the acquittal is on the ground of such insanity.
- (5) Where it appears to the court that it is not practicable or appropriate for the accused to attend an examination of facts the court may, if no objection is taken by or on behalf of the accused, order that the examination of facts shall proceed in his absence.
- (6) Subject to the provisions of this section, section 375ZB of this Act and any Act of Adjournal, the rules of evidence and procedure and the powers of the court in respect of an examination of facts shall be as nearly as possible those applicable in respect of a trial.
- (7) For the purposes of the application to an examination of facts of the rules and powers mentioned in subsection (6) above, an examination of facts—
- (a) commences when the diet is called; and
  - (b) concludes when the court—
    - (i) acquits the person under subsection (3) above;
    - (ii) makes an order under subsection (2) of section 375ZC of this Act; or
    - (iii) decides, under paragraph (e) of that subsection, not to make an order.

### **375ZB Examination of facts: supplementary provisions.**

- (1) An examination of facts ordered under section 375(2)(b) of this Act may, where the order is made at the trial diet, be held immediately following the making of the order and, where it is so held, the citation of the accused and any witness to the trial diet shall be a valid citation to the examination of facts.
- (2) Where an accused person is not legally represented at an examination of facts the court shall appoint counsel or a solicitor to represent his interests.

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- (3) The court may, on the motion of the prosecutor and after hearing the accused, order that the examination of facts shall proceed in relation to a particular charge, or particular charges, in the complaint in priority to other such charges.
- (4) The court may, on the motion of the prosecutor and after hearing the accused, at any time desert the examination of facts pro loco et tempore as respects the whole complaint or any charge in the complaint.
- (5) Where, and to the extent that, an examination of facts has, under subsection (4) above, been deserted pro loco et tempore, the prosecutor may, at any time, raise a fresh libel notwithstanding any time limit which would otherwise apply in respect of prosecution of the alleged offence.
- (6) If, in a case where a court has made a finding under subsection (2) of section 375ZA of this Act, a person is subsequently charged, whether on indictment or on a complaint, with an offence arising out of the same act or omission as is referred to in subsection (1) of that section, any order made under section 375ZC(2) of this Act shall, with effect from the commencement of the later proceedings, cease to have effect.
- (7) For the purposes of subsection (6) above, the later proceedings are commenced when the indictment or, as the case may be, the complaint is served.

### **375ZC Disposal of case where accused found to be insane.**

- (1) This section applies where—
  - (a) a person is, by virtue of section 375(3A) or 375ZA(3) of this Act, acquitted on the ground of his insanity at the time of the act or omission; or
  - (b) following an examination of facts under section 375ZA, a court makes a finding under subsection (2) of that section.
- (2) Where this section applies the court may, as it thinks fit—
  - (a) make an order (which shall have the same effect as a hospital order) that the person be detained in such hospital as the court may specify;
  - (b) in addition to making an order under paragraph (a) above, make an order (which shall have the same effect as a restriction order) that the person shall, without limit of time, be subject to the special restrictions set out in section 62(1) of the Mental Health (Scotland) Act 1984;
  - (c) make an order (which shall have the same effect as a guardianship order) placing the person under the guardianship of a local authority or of a person approved by a local authority;
  - (d) make a supervision and treatment order (within the meaning of paragraph 1(1) of Schedule 5A to this Act); or
  - (e) make no order.
- (3) Sections 376(1) and (6) to (9) and 377 to 379 of this Act shall have effect in relation to the making, terms and effect of an order under paragraph (a), (b) or (c) of subsection (2) above as those provisions have effect in relation to the making, terms and effect of, respectively, a hospital order, a restriction order and a guardianship order as respects a person convicted of an offence, other than an offence the sentence for which is fixed by law, punishable by imprisonment.

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*Status: Point in time view as at 23/04/1991. This version of this part contains provisions that are prospective.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1975, Part II is up to date with all changes known to be in force on or before 12 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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### **375ZD Appeal by accused in case involving insanity.**

- (1) A person may appeal to the High Court against—
  - (a) a finding made under section 375(2) of this Act that he is insane so that his trial cannot proceed or continue, or the refusal of the court to make such a finding;
  - (b) a finding under section 375ZA(2) of this Act; or
  - (c) an order made under section 375ZC(2) of this Act.
- (2) An appeal under subsection (1) above shall be—
  - (a) in writing; and
  - (b) lodged—
    - (i) in the case of an appeal under paragraph (a) of that subsection, not later than seven days after the date of the finding or refusal which is the subject of the appeal;
    - (ii) in the case of an appeal under paragraph (b), or both paragraphs (b) and (c), of that subsection, not later than 28 days after the conclusion of the examination of facts;
    - (iii) in the case of an appeal under paragraph (c) of that subsection against an order made on an acquittal, by virtue of section 375(3A) or 375ZA(3) of this Act, on the ground of insanity at the time of the act or omission, not later than 14 days after the date of the acquittal;
    - (iv) in the case of an appeal under that paragraph against an order made on a finding under section 375ZA(2), not later than 14 days after the conclusion of the examination of facts,
 or within such longer period as the High Court may, on cause shown, allow.
- (3) Where an appeal is taken under subsection (1) above, the period from the date on which the appeal was lodged until it is withdrawn or disposed of shall not count towards any time limit applying in respect of the case.
- (4) An appellant in an appeal under this section shall be entitled to be present at the hearing of the appeal unless the High Court determines that his presence is not practicable or appropriate.
- (5) In disposing of an appeal under subsection (1) above the High Court may—
  - (a) affirm the decision of the court of first instance;
  - (b) make any other finding or order which that court could have made at the time when it made the finding or order which is the subject of the appeal; or
  - (c) remit the case to that court with such directions in the matter as the High Court thinks fit.
- (6) Section 443 of this Act shall not apply in relation to any order as respects which a person has a right of appeal under subsection (1)(c) above.

### **375ZE Appeal by prosecutor in case involving insanity.**

- (1) The prosecutor may appeal to the High Court on a point of law against—
  - (a) a finding under subsection (2) of section 375 of this Act that an accused is insane so that his trial cannot proceed or continue;
  - (b) an acquittal on the ground of insanity at the time of the act or omission by virtue of subsection (3A) of that section;

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- (c) an acquittal under section 375ZA(3) of this Act (whether or not on the ground of insanity at the time of the act or omission); or
  - (d) any order made under section 375ZC(2) of this Act.
- (2) An appeal under subsection (1) above shall be—
- (a) in writing; and
  - (b) lodged—
    - (i) in the case of an appeal under paragraph (a) or (b) of that subsection, not later than seven days after the finding or, as the case may be, the acquittal which is the subject of the appeal;
    - (ii) in the case of an appeal under paragraph (c) or (d) of that subsection, not later than seven days after the conclusion of the examination of facts,or within such longer period as the High Court may, on cause shown, allow.
- (3) A respondent in an appeal under this section shall be entitled to be present at the hearing of the appeal unless the High Court determines that his presence is not practicable or appropriate.
- (4) In disposing of an appeal under subsection (1) above the High Court may—
- (a) affirm the decision of the court of first instance;
  - (b) make any other finding or order which that court could have made at the time when it made the finding or order which is the subject of the appeal; or
  - (c) remit the case to that court with such directions in the matter as the High Court thinks fit.

### <sup>F141</sup>**375A Interim hospital orders.**

- (1) Where, in the case of any person charged summarily in the sheriff court—
- (a) the person is convicted of an offence punishable by that court with imprisonment (other than an offence the sentence for which is fixed by law); or
  - (b) the sheriff is satisfied that the person did the act or made the admission charged but does not convict him,

and the sheriff is satisfied on the written or oral evidence of two medical practitioners (complying with the provisions of subsection (3) of this section and section 377 of this Act)—

- (a) that the offender is suffering from mental disorder within the meaning of <sup>F142</sup>section 1(2) of the <sup>M57</sup>Mental Health (Scotland) Act 1984]; and
- (b) that there is reason to suppose—
  - (i) that the mental disorder from which the offender is suffering is such that it may be appropriate for a hospital order to be made in his case; and
  - (ii) that, having regard to the provisions of section 376(7) of this Act, the hospital to be specified in any such hospital order may be a State hospital,

the court may, before making a hospital order or dealing with the offender in some other way, make an order (to be known as “an interim hospital order”) authorising his admission to and detention in a State hospital or such other hospital as for special reasons the court may specify in the order.

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- (2) Where a person is remitted to the sheriff court from the district court under section 376(4) of this Act, the sheriff court may, if it is satisfied as in subsection (1) of this section, make an interim hospital order in relation to that person.
- (3) Of the medical practitioners whose evidence is taken into account under subsection (1) of this section at least one shall be employed at the hospital which is to be specified in the order.
- (4) An interim hospital order shall not be made in respect of an offender unless the court is satisfied that the hospital which is to be specified in the order, in the event of such an order being made by the court, is available for his admission thereto within 28 days of the making of such an order.
- (5) Where a court makes an interim hospital order it shall not make any other order for detention or impose a fine or pass sentence of imprisonment or make a probation order or a community service order in respect of the offence, but may make any other order which it has power to make apart from this section.
- (6) The court by which an interim hospital order is made may include in the order such direction as it thinks fit for the conveyance of the offender to a place of safety and his detention therein pending his admission to the hospital within the period of 28 days referred to in subsection (4) of this section.
- (7) An interim hospital order—
  - (a) shall be in force for such period, not exceeding 12 weeks, as the court may specify when making the order; but
  - (b) may be renewed for further periods of not more than 28 days at a time if it appears to the court on the written or oral evidence of the responsible medical officer that the continuation of the order is warranted;

but no such order shall continue in force for more than 6 months in all and the court shall terminate the order if it makes a hospital order in respect of the offender or decides, after considering the written or oral evidence of the responsible medical officer, to deal with the offender in some other way.
- (8) The power of renewing an interim hospital order may be exercised without the offender being brought before the court if he is represented by counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.
- (9) If an offender absconds from a hospital in which he is detained in pursuance of an interim hospital order, or while being conveyed to or from such a hospital, he may be arrested without warrant by a constable and shall, after being arrested, be brought as soon as practicable before the court which made the order; and the court may thereupon terminate the order and deal with him in any way in which it could have dealt with him if no such order had been made.
- (10) When an interim hospital order ceases to have effect in relation to an offender the court may deal with him in any way (other than by making a new interim hospital order) in which it could have dealt with him if no such order had been made.
- (11) The power conferred on the court by the provisions of this section is without prejudice to the power of the court under section 381(1) of this Act to remand a person in order that an inquiry may be made into his physical or mental condition.]



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#### Textual Amendments

- F141** S. 375A inserted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), s. 34\(c\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)
- F142** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 127\(1\), Sch. 3 para. 32](#)

#### Marginal Citations

- M57** [1984 c. 36\(85\)](#).

### 376 Power of court to order hospital admission or guardianship.

- (1) Where a person is convicted in the sheriff court of an offence, other than an offence the sentence for which is fixed by law, punishable by that court with imprisonment, and the following conditions are satisfied, that is to say—
  - (a) the court is satisfied, on the written or oral evidence of two medical practitioners (complying with the provisions of section 377 of this Act) that [<sup>F143</sup>the grounds set out in section [<sup>F144</sup>17(1)] or, as the case may be, the ground set out in section [<sup>F144</sup>36(a)] of the [<sup>F144M58</sup>Mental Health (Scotland) Act 1984] apply in relation to the offender]; and
  - (b) the court is of opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section,the court may by order authorise his admission to and detention in such hospital as may be specified in the order or, as the case may be, place him under the guardianship of such local authority or of such other person approved by a local authority as may be so specified.
- (2) Where a person is charged summarily in the sheriff court with an act or omission as an offence and a finding has been recorded in respect of that person under section 375(2) of this Act, the court shall make such an order for his admission to and detention in a hospital as may be made under the foregoing subsection.
- (3) Where in the case of a person charged as aforesaid the court would have power, on convicting him, to make an order under subsection (1) of this section, then, if it is satisfied that the person did the act or made the omission charged, the court may, if it thinks fit, make such an order without convicting him.
- (4) Where a person is charged before a court of summary jurisdiction, other than a sheriff court, with any act or omission constituting an offence punishable with imprisonment, the court, if it appears to it that that person may be suffering from mental disorder, shall remit him to the sheriff court in the manner provided by section 286 of this Act, and the sheriff court shall, on any such remit being made, have the like power to make an order under subsection (1) of this section in respect of him as if he had been charged before that court with the said act or omission as an offence, or in dealing with him may exercise the like powers as the court making the remit.
- (5) Where it appears to the prosecutor in any court before which a person is charged with an offence that the person may be suffering from mental disorder, it shall be the duty of such prosecutor to bring before the court such evidence as may be available of the mental condition of that person.

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- (6) An order for the admission of a person to a hospital (in this Act referred to as “a hospital order”) shall not be made under this section in respect of an offender or of a person to whom subsection (3) of this section applies unless the court is satisfied that that hospital, in the event of such an order being made by the court, is available for his admission thereto within 28 days of the making of such an order.
- (7) A State hospital shall not be specified in a hospital order in respect of the detention of a person unless the court is satisfied, on the evidence of the medical practitioners which is taken into account under paragraph (a) of subsection (1) of this section, that the offender, on account of his dangerous, violent or criminal propensities, requires treatment under conditions of special security, and cannot suitably be cared for in a hospital other than a State hospital.
- (8) An order placing a person under the guardianship of a local authority or of any other person (in this Act referred to as “a guardianship order”) shall not be made under this section unless the court is satisfied
- [<sup>F145</sup>(a) after taking into consideration the evidence of a mental health officer, that it is necessary in the interests of the welfare of the person that he should be placed under guardianship; and
- (b)]
- that that authority or person is willing to receive that person into guardianship.
- (9) A hospital order or guardianship order shall specify the form of mental disorder, being mental illness or mental [<sup>F146</sup>handicap], or both, from which, upon the evidence taken into account under paragraph (a) of subsection (1) of this section, the offender is found by the court to be suffering; and no such order shall be made unless the offender is described by each of the practitioners, whose evidence is taken into account as aforesaid, as suffering from the same form of mental disorder, whether or not he is also described by either of them as suffering from the other form.
- (10) Where an order is made under this section, the court shall not pass sentence of imprisonment or impose a fine or make a probation order [<sup>F147</sup>or a community service order] in respect of the offence, but may make any other order which the court has power to make apart from this section; and for the purposes of this subsection “sentence of imprisonment” includes any sentence or order for detention.

#### Textual Amendments

- F143** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), Sch. 2 para. 34\(a\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)
- F144** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 127\(1\)](#), **Sch. 3 para. 33**
- F145** Words inserted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), Sch. 2 para. 34\(b\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)
- F146** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), Sch. 2 para. 34\(b\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)
- F147** Words inserted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), Sch. 2 para. 34\(d\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)

#### Modifications etc. (not altering text)

- C47** [S. 376](#) extended by [Contempt of Court Act 1981 \(c. 49, SIF 39:3\)](#), **s. 15(3)**

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#### Marginal Citations

M58 1984 c. 36(85).

### 377 Requirements as to medical evidence.

- (1) Of the medical practitioners whose evidence is taken into account under [F148sections 375A(1) and] 376(1)(a) of this Act, at least one shall be a practitioner approved for the purposes of [F149section 20 or section 39 of the M59Mental Health (Scotland) Act 1984] by a Health Board as having special experience in the diagnosis or treatment of mental disorder.
- [F150(1A) Written or oral evidence given for the purposes of the said section 376(1)(a) shall include a statement as to whether the person giving the evidence is related to the accused and of any pecuniary interest which that person may have in the admission of the accused to hospital or his reception into guardianship.]
- (2) For the purposes of the said section 376(1)(a) a report in writing purporting to be signed by a medical practitioner may, subject to the provisions of this section, be received in evidence without proof of the signature or qualifications of the practitioner; but the court may, in any case, require that the practitioner by whom such a report was signed be called to give oral evidence.
- (3) Where any such report as aforesaid is tendered in evidence, otherwise than by or on behalf of the accused, then—
  - (a) if the accused is represented by counsel or solicitor, a copy of the report shall be given to his counsel or solicitor;
  - (b) if the accused is not so represented, the substance of the report shall be disclosed to the accused or, where he is a child under 16 years of age, to his parent or guardian if present in court;
  - (c) in any case, the accused may require that the practitioner by whom the report was signed be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by or on behalf of the accused;and where the court is of opinion that further time is necessary in the interests of the accused for consideration of that report, or the substance of any such report, it shall adjourn the case.
- (4) For the purpose of calling evidence to rebut the evidence contained in any such report as aforesaid, arrangements may be made by or on behalf of an accused person detained in a hospital for his examination by any medical practitioner, and any such examination may be made in private.

#### Textual Amendments

- F148** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), Sch. 2 para. 35](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)
- F149** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 27\(1\), Sch. 3 para. 34](#)
- F150** [S. 377\(1A\)](#) inserted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), s. 35\(b\), Sch. 1 para. 12](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)

#### Modifications etc. (not altering text)

- C48** [S. 377](#) extended by [Contempt of Court Act 1981 \(c. 49, SIF 39:3\), s. 15\(3\)](#)

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#### Marginal Citations

**M59** 1984 c. 36(85).

### 378 Supplementary provisions as to hospital orders.

The court by which a hospital order is made may give such directions as it thinks fit for the conveyance of the patient to a place of safety and his detention therein pending his admission to the hospital within the period of 28 days referred to in section 376(6) of this Act; but a direction for the conveyance of a patient to a residential establishment provided by a local authority under Part IV of the<sup>M60</sup>Social Work (Scotland) Act 1968 shall not be given unless the court is satisfied that that authority is willing to receive the patient therein.

#### Modifications etc. (not altering text)

**C49** S. 378 extended by Contempt of Court Act 1981 (c. 49, SIF 39:3), s. 15(3)

#### Marginal Citations

**M60** 1968 c. 49(81:3).

### 379 Power of court to restrict discharge from hospital.

- (1) Where a hospital order is made in respect of a person, and it appears to the court, having regard to the nature of the offence with which he is charged, the antecedents of the person and the risk that as a result of his mental disorder he would commit offences if set at large, that it is necessary for the protection of the public [<sup>F151</sup>from serious harm] so to do, the court may, subject to the provisions of this section, further order that the person shall be subject to the special restrictions set out in [<sup>F152</sup>section 62(1) of the<sup>M61</sup>Mental Health (Scotland) Act 1984], either without limit of time or during such period as may be specified in the order.
- (2) An order under this section (in this Act referred to as [<sup>F153</sup>“a restriction order”]) shall not be made in the case of any person unless the medical practitioner approved by the Health Board for the purposes of [<sup>F154</sup>section 20 or section 39 of the<sup>M62</sup>Mental Health (Scotland) Act 1984], whose evidence is taken into account by the court under section 376(1)(a) of this Act, has given evidence orally before the court.
- (3) Where [<sup>F155</sup>a restriction order is in force in respect of a patient], a guardianship order shall not be made in respect of him; and where the hospital order relating to him ceases to have effect by virtue of [<sup>F156</sup>section 62(1) of the<sup>M63</sup>Mental Health (Scotland) Act 1984] on the making of another hospital order, that order shall have the same effect in relation to [<sup>F157</sup>the restriction order] as the previous hospital order, but without prejudice to the power of the court making that other hospital order to make [<sup>F158</sup>another restriction order] to have effect on the expiration of the previous such order.

#### Textual Amendments

**F151** Words inserted by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), s. 22(2) and Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 126(2)(b)

**F152** Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), Sch. 3 para. 35(a)

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**F153** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\)](#), [Sch. 2 para. 36\(a\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), [s. 126\(2\)\(b\)](#)

**F154** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(1), [Sch. 3 para. 35\(b\)](#)

**F155** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\)](#), [Sch. 2 para. 36\(b\)\(i\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), [s. 126\(2\)\(b\)](#)

**F156** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(1), [Sch. 3 para. 35\(c\)](#)

**F157** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\)](#), [Sch. 2 para. 36\(b\)\(ii\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), [s. 126\(2\)\(b\)](#)

**F158** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\)](#), [Sch. 2 para. 36\(b\)\(iii\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), [s. 126\(2\)\(b\)](#)

#### Modifications etc. (not altering text)

**C50** [S. 379](#) extended by [Contempt of Court Act 1981 \(c. 49, SIF 39:3\)](#), [s. 15\(3\)](#)

**C51** [S. 379\(3\)](#) extended by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), [s. 76](#)

#### Marginal Citations

**M61** [1984 c. 36\(85\)](#).

**M62** [1984 c. 36\(85\)](#).

**M63** [1984 c. 36\(85\)](#).

## CONVICTION AND SENTENCE

### *Adjournment and remand*

#### **380 Power of court to adjourn case before sentence.**

(1) It is hereby declared that the power of a court to adjourn the hearing of a case includes power, after a person has been convicted or the court has found that he committed the offence and before he has been sentenced or otherwise dealt with, to adjourn the case for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with his case [<sup>F159</sup> and where the court so adjourns the case it shall remand the accused in custody or on bail][<sup>F160</sup> or ordain him to appear at the adjourned diet].

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

[<sup>F161</sup>(2) An accused who is remanded under this section may appeal against the refusal of bail or against the conditions imposed within 24 hours of his remand, by note of appeal presented to the High Court, and the High Court, either in court or in chambers, may, after hearing parties—

- [ review the order appealed against and either grant bail on such conditions as  
<sup>F162</sup>(a) it thinks fit or ordain the accused to appear at the adjourned diet;] or  
(b) confirm the order.]

#### Textual Amendments

**F159** Words substituted with saving by [Criminal Evidence Act 1979 \(c. 16, SIF 47\)](#), [s. 1](#)

**F160** Words inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 59\(a\)](#)

**F161** [S. 380\(2\)](#) added by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), [s. 5\(b\)](#)

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**F162** S. 380(2)(a) substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 7 para. 59(b)

**380A Offence committed by person under supervision etc.: provision of local authority report.**

- (1) Where a person specified in section 27(1)(b)(i) to (vi) of the Social Work (Scotland) Act 1968 commits an offence, the court shall not dispose of the case without obtaining from the local authority in whose area the person resides a report as to—
  - (a) the circumstances of the offence; and
  - (b) the character of the offender, including his behaviour while under the supervision, or as the case may be subject to the order, so specified in relation to him.
- (2) In subsection (1) above, “the court” does not include a district court.

**381 Remand for inquiry into physical or mental condition.**

- (1) Without prejudice to any powers exercisable by a court under the last foregoing section, where a person is charged before a court with an offence punishable with imprisonment, and the court is satisfied that he did the act or made the omission charged but is of opinion that an inquiry ought to be made into his physical or mental condition before the method of dealing with him is determined, the court shall remand him in custody or on bail for such period or periods, no single period exceeding three weeks, as the court thinks necessary to enable a medical examination and report to be made.
- (2) Where a person is remanded on bail under this section, . . . <sup>F164</sup> it shall be a condition of the [<sup>F165</sup>order granting bail] that he shall—
  - (a) undergo a medical examination by a duly qualified medical practitioner or, where the inquiry is into his mental condition and the [<sup>F165</sup>order granting bail] so specifies, two such practitioners; and
  - (b) for the purpose attend at an institution or place, or on any such practitioner specified in the [<sup>F165</sup>order granting bail] and, where the inquiry is into his mental condition, comply with any directions which may be given to him for the said purpose by any person so specified or by a person of any class so specified;

and, if arrangements have been made for his reception, it may be a condition of the [<sup>F165</sup>order granting bail] that the person shall, for the purpose of the examination, reside in an institution or place specified as aforesaid, not being an institution or place to which he could have been remanded in custody, until the expiry of such period as may be so specified or until he is discharged therefrom, whichever first occurs.

- (3) . . . . . <sup>F166</sup>
- (4) On exercising the powers conferred by this section the court shall—
  - (a) where the person is remanded in custody, send to the institution or place in which he is detained, and
  - (b) where the person is released on bail, send to the institution or place at which or the person by whom he is to be examined,

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

*Status: Point in time view as at 23/04/1991. This version of this part contains provisions that are prospective.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1975, Part II is up to date with all changes known to be in force on or before 12 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- [<sup>F167</sup>(5) A person remanded under this section may appeal against the refusal of bail or against the conditions imposed within 24 hours of his remand, by note of appeal presented to the High Court, and the High Court, either in court or in chambers, may after hearing parties—
- (a) review the order and grant bail on such conditions as it thinks fit; or
  - (b) confirm the order.]

#### Textual Amendments

**F164** S. 141(2)(3) added by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 28(c), **Sch. 6 para. 1**

**F165** Words substituted by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 1 para. 9**

**F166** S. 18(2)–(5) substituted for s. 18(2) by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **s. 7(1)**

**F167** S. 381(5) added by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **s. 6(b)**

### *Admonition and discharge*

#### **382 Admonition.**

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

#### **383 Absolute discharge.**

Where a person is charged before a court of summary jurisdiction with an offence (other than an offence the sentence for which is fixed by law) and the court is satisfied that he committed the offence, the court, if it is of opinion, having regard to the circumstances, including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate may, without proceeding to conviction, make an order discharging him absolutely.

#### Modifications etc. (not altering text)

**C52** S. 383 amended by Licensed Premises (Exclusion of Certain Persons) Act 1980 (c. 32, SIF 68A:1, 2), **s. 1(2)(c)**

### *Probation*

#### **384 Probation.**

- (1) [<sup>F168</sup>Subject to subsection (1A) below,] where a person is charged before a court of summary jurisdiction with an offence (other than an offence the sentence for which is fixed by law) and the court is satisfied that he committed the offence, the court, if it is of opinion having regard to the circumstances, including the nature of the offence and the character of the offender [<sup>F169</sup>and having obtained a report as to the circumstances and character of the offender], that it is expedient to do so, may, without proceeding to conviction [<sup>F170</sup>(except in a case to which section 432 of this Act applies)], make a probation order, that is to say an order requiring the offender to be under supervision for a period to be specified in the order of not less than [<sup>F171</sup>six months] nor more than three years.

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[<sup>F172</sup>(1A) A court shall not make a probation order under subsection (1) above unless it is satisfied that suitable arrangements for the supervision of the offender can be made by the local authority in whose area he resides or is to reside.]

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

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

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

[<sup>F173</sup>(a)] [<sup>F174</sup>conducive to] securing the good conduct of the offender or [<sup>F175</sup>to] preventing a repetition by him of the offence or the commission of other offences; [<sup>F176</sup>or

(b) where the probation order is to include such a requirement as is mentioned in subsection (5A) [<sup>F177</sup>or (5B)] below, conducive to securing or preventing the aforesaid matters].

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

Provided that—

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

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

[<sup>F178</sup>(5A) Without prejudice to the generality of subsection (4) above, where a court which is considering making a probation order—

(a) is satisfied that the offender is of or over 16 years of age and has committed an offence punishable with imprisonment and that the conditions for the making of a community service order under the <sup>M64</sup>Community Service by Offenders (Scotland) Act 1978 specified in paragraphs (a) and (c) of section 1(2) of that Act have been met;

(b) has been notified by the Secretary of State that arrangements exist for persons who reside in the locality where the offender resides, or will be residing when the probation order comes into force, to perform unpaid work as a requirement of a probation order; and



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- (c) is satisfied that provision can be made under the arrangements mentioned in paragraph (b) above for the offender to perform unpaid work under the probation order,

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

- (i) subsections (1), (2)(b) and (d) and (4)(b) of section 1 and sections 4 <sup>[F179]</sup>, 6 and 6A] were omitted;
- (ii) in section 1(5) for the words “subsection (1) above” there were substituted the words “subsection (5A) of section 183 or, as the case may be, 384 of the 1975 Act”; and
- (iii) any other necessary modifications were made.]

<sup>[F180]</sup>(5B) Without prejudice to the generality of subsection (4) above, where a court is considering making a probation order it may include in the probation order, in addition to any other requirement, a requirement that the offender shall pay compensation either in a lump sum or by instalments for any personal injury, loss or damage caused (whether directly or indirectly) by the acts which constituted the offence; and the following provisions of the Criminal Justice (Scotland) Act 1980 shall apply to such a requirement as if any reference in them to a compensation order included a reference to a requirement to pay compensation under this subsection—

- section 58(2) and (3);
- section 59 (except the proviso to subsection (1) and subsection (3));
- 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.]

(6) Before making a probation order, the court shall explain to the offender in ordinary language the effect of the order (including any additional requirements proposed to be inserted therein under subsection (4) <sup>[F181]</sup> or (5) (5A), (5B) or (5C)] of this section or

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under the next following section) and that if he fails to comply therewith or commits another offence during the probation period he will be liable to be convicted of and sentenced for the original offence and the court shall not make the order unless the offender expresses his willingness to comply with the requirements thereof.

- (7) The clerk of the court by which a probation order is made or of the appropriate court, as the case may be, shall cause copies thereof to be given to the officer of the local authority who is to supervise the probationer, to the probationer, and to the person in charge of any institution or place in which the probationer is required to reside under the probation order.

### Textual Amendments

- F168** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), Sch. 2 para. 34\(a\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)
- F169** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 127\(1\), Sch. 3 para. 33](#)
- F170** [S. 375ZD](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 51\(2\)](#); [S.I. 1996/517, arts. 3\(2\), 4-6, Sch. 2](#)
- F171** Words inserted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), Sch. 2 para. 34\(b\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)
- F172** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), Sch. 2 para. 34\(b\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)
- F173** [S. 375ZC](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 50\(2\)](#); [S.I. 1996/517, arts. 3\(2\), 4-6, Sch. 2](#)
- F174** Words inserted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), Sch. 2 para. 34\(d\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)
- F175** [S. 376\(2\)](#) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117, Sch. 6 Pt. I para. 133\(a\), Sch. 7 Pt. I](#); [S.I. 1996/517, arts. 3\(2\), 4-6, Sch. 2](#)
- F176** Words added by [Community Service by Offenders \(Scotland\) Act 1978 \(c. 49, SIF 39:1\), s. 7\(a\)](#)
- F177** Words in [s. 376\(3\)](#) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117\(1\), Sch. 6 Pt. I para. 133\(b\)](#); [S.I. 1996/517, arts. 3\(2\), 4-6, Sch. 2](#)
- F178** [S. 375ZE](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 52\(2\)](#); [S.I. 1996/517, arts. 3\(2\), 4-6, Sch. 2](#)
- F179** Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 68\(2\), Sch. 13 Pt. II para. 3](#)
- F180** [S. 384\(5B\)\(5C\)](#) inserted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\), ss. 47\(4\)\(a\), 65\(1\)\(2\)\(b\)](#)
- F181** [Community Service by Offenders \(Scotland\) Act 1978 \(c. 49, SIF 39:1\), s.7\(e\)](#) (substituting “(5) or (5A)” for “or (5)”) is repealed by virtue of the [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\), ss. 47\(4\)\(a\), 70\(2\), Sch. 2](#) and for “or (5A)” there is substituted “(5A), (5B) or (5C)” by virtue of the [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\), ss. 47\(4\)\(a\), 65\(4\)](#)

### Modifications etc. (not altering text)

- C53** [S. 384](#) amended by [Licensed Premises \(Exclusion of Certain Persons\) Act 1980 \(c. 32, SIF 39:1\), s. 1\(2\)\(c\)](#)

### Marginal Citations

- M64** [1978 c. 49\(39:1\)](#).

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### 385 Probation orders requiring treatment for mental condition.

- (1) Where the court is satisfied, on the evidence of a registered medical practitioner approved for the purposes of [F182]section 20 or 39 of the M65Mental Health (Scotland) Act 1984], that the mental condition of an offender is such as requires and may be susceptible to treatment but is not such as to warrant his detention in pursuance of a hospital order under [F182]Part VI of that Act], or under this Act, the court may, if it makes a probation order, include therein a requirement that the offender shall submit, for such period not extending beyond 12 months from the date of the requirement as may be specified therein, to treatment by or under the direction of a registered medical practitioner with a view to the improvement of the offender’s mental condition.
- (2) The treatment required by any such order shall be such one of the following kinds of treatment as may be specified in the order, that is to say—
  - (a) treatment as a resident patient in a hospital within the meaning of the [F183M66]Mental Health (Scotland) Act 1984], not being a State hospital within the meaning of that Act;
  - (b) treatment as a non-resident patient at such institution or place as may be specified in the order; or
  - (c) treatment by or under the direction of such registered medical practitioner as may be specified in the order;but except as aforesaid the nature of the treatment shall not be specified in the order.
- (3) A court shall not make a probation order containing such a requirement as aforesaid unless it is satisfied that arrangements have been made for the treatment intended to be specified in the order, and, if the offender is to be treated as a resident patient, for his reception.
- (4) ..... F184
- [F185](5) Where the medical practitioner by whom or under whose direction a probationer is receiving any of the kinds of treatment to which he is required to submit in pursuance of a probation order is of opinion—
  - (a) that the probationer requires, or that it would be more appropriate for him to receive, a different kind of treatment (whether in whole or in part) from that which he has been receiving, being treatment of a kind which subject to subsection (5A) of this section could have been specified in the probation order; or
  - (b) that the treatment (whether in whole or in part) can be more appropriately given in or at a different institution or place from that where he has been receiving treatment in pursuance of the probation order,he may, subject to subsection (5B) of this section, make arrangements for the probationer to be treated accordingly.
  - (5A) Arrangements made under subsection (5) of this section may provide for the probationer to receive his treatment (in whole or in part) as a resident patient in an institution or place notwithstanding that it is not one which could have been specified in that behalf in the probation order.
  - (5B) Arrangements shall not be made under subsection (5) of this section unless—
    - (a) the probationer and any officer responsible for his supervision agree;
    - (b) the treatment will be given by or under the direction of a registered medical practitioner who has agreed to accept the probationer as his patient; and

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- (c) where such treatment entails the probationer's being a resident patient, he will be received as such.]
- (6) Where any such arrangements as are mentioned in [<sup>F186</sup>subsection (5) of this section] are made for the treatment of a probationer—
- (a) the [<sup>F187</sup>any officer responsible for the probationer's supervision shall notify the appropriate court of the arrangements;] and
- (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the probation order.
- (7) Subsections (2), (3) and (4) of section 377 of this Act shall apply for the purposes of this section as if for the reference in the said subsection (2) to section 376(1)(a) of this Act there were substituted a reference to subsection (1) of this section.
- (8) Except as provided by this section, a court shall not make a probation order requiring a probationer to submit to treatment for his mental condition.

#### Textual Amendments

**F182** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 127\(1\), Sch. 3 para. 36\(a\)](#)

**F183** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 127\(1\), Sch. 3 para. 36\(b\)](#)

**F184** Words in [s. 18\(3\)\(a\)](#) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117\(1\), Sch. 6 Pt. I para. 10](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)

**F185** [S. 385\(5\)\(5A\)\(5B\)](#) substituted for [s. 385\(5\)](#) by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), s. 36\(2\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)

**F186** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), s. 36\(3\)\(a\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)

**F187** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), s. 36\(3\)\(b\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)

#### Marginal Citations

**M65** [1984 c. 36\(85\)](#).

**M66** [1984 c. 36\(85\)](#).

### 386 Discharge and amendment of probation orders.

- (1) The provisions of Schedule 5 to this Act shall have effect in relation to the discharge and amendment of probation orders.
- (2) Where, under section 387 of this Act, a probationer is sentenced for the offence for which he was placed on probation, the probation order shall cease to have effect.

### 387 Failure to comply with requirement of probation order.

- (1) If, on information on oath from
- [<sup>F188</sup>(a)] the officer supervising the probationer
- [<sup>F189</sup>(b)] the director of social work of the local authority whose officer is supervising the probationer; or
- (c) an officer appointed by the director of social work to act on his behalf for the purposes of this subsection,]

it appears to the court by which the order was made or to the appropriate court that the probationer has failed to comply with any of the requirements of the order, that court

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may issue a warrant for the arrest of the probationer, or may, if it thinks fit, instead of issuing such a warrant in the first instance, issue a citation requiring the probationer to appear before the court at such time as may be specified in the citation.

- (2) If it is proved to the satisfaction of the court before which a probationer appears or is brought in pursuance of the foregoing subsection that he has failed to comply with any of the requirements of the probation order, the court may—
- (a) [<sup>F190</sup>except in the case of a failure to comply with a requirement to pay compensation and] without prejudice to the continuance in force of the probation order, impose a fine not exceeding [<sup>F191</sup>level 3 on the standard scale], or
  - (b)
    - (i) where the probationer has been convicted for the offence for which the order was made, sentence him for that offence;
    - (ii) where the probationer has not been so convicted, convict him and sentence him as aforesaid; or
  - (c) vary any of the requirements of the probation order, so however that any extension of the probation period shall terminate not later than three years from the date of the probation order [<sup>F192</sup>; or
  - (d) without prejudice to the continuance in force of the probation order, in a case where the conditions required by the <sup>M67</sup>Community Service by Offenders (Scotland) Act 1978 are satisfied, make a community service order, and the provisions of that Act shall apply to such an order as if the failure to comply with the requirement of the probation order were the offence in respect of which the order had been made.]
- (3) A fine imposed under this section in respect of a failure to comply with the requirements of a probation order shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by or in respect of a conviction of a penalty imposed on a person summarily convicted.
- (4) A probationer who is required by a probation order to submit to treatment for his mental condition shall not be deemed for the purpose of this section to have failed to comply with that requirement on the ground only that he has refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances.
- (5) Without prejudice to the provisions of section 388 of this Act, a probationer who is convicted of an offence committed during the probation period shall not on that account be liable to be dealt with under this section for failing to comply with any requirement of the probation order.

#### Textual Amendments

- F188** S. 387 “(a)” inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 61(2)(a); S.I. 1991/850, art. 3, Schedule
- F189** S. 387(1)(b)(c) inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 61(2)(b); S.I. 1991/850, art. 3, Schedule
- F190** Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 65(5)
- F191** Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 56, Sch. 7
- F192** Word and s. 387(2)(d) added by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), s. 8

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### Marginal Citations

M67 1978 c. 49(39:1).

### 388 Commission of further offence.

- (1) If it appears to the court by which a probation order has been made (or to the appropriate court) that the probationer to whom the order relates has been convicted by a court in any part of Great Britain of an offence committed during the probation period and has been dealt with for that offence, the first-mentioned court (or the appropriate court) may issue a warrant for the arrest of the probationer, or may, if it thinks fit, instead of issuing such a warrant in the first instance issue a citation requiring the probationer to appear before that court at such time as may be specified in the citation, and on his appearance or on his being brought before the court the court may, if it thinks fit, deal with him under section 387(2)(b) of this Act.
- (2) Where a probationer is convicted by the court which made the probation order (or by the appropriate court) of an offence committed during the probation period, that court may, if it thinks fit, deal with him under section 387(2)(b) of this Act for the offence for which the order was made as well as for the offence committed during the period of probation.

### 389 Probation orders relating to persons residing in England.

- (1) Where the court by which a probation order is made under section 384 of this Act [<sup>F193</sup>(not being a probation order including a requirement that the offender shall perform unpaid work)] is satisfied that the offender has attained the age of 17 years and resides or will reside in England, subsection (2) of the said section shall not apply to the order, but the order shall contain a requirement that he be under the supervision of a probation officer appointed for or assigned to the petty sessions area in which the offender resides or will reside; and that area shall be named in the order.
- (2) Where a probation order has been made under section 384 of this Act and the court in Scotland by which the order was made or the appropriate court is satisfied that the probationer has attained the age of 17 years and proposes to reside or is residing in England, the power of that court to amend the order under Schedule 5 to this Act shall include power to insert the provisions required by subsection (1) of this section; and the court may so amend the order without summoning the probationer and without his consent.
- (3) A probation order made or amended by virtue of this section may, notwithstanding section 385(8) of this Act, include a requirement that the probationer shall submit to treatment for his mental condition, and—
  - (a) subsections (1), (3) and (7) of the said section 385 and section 3(2) of the <sup>M68</sup>Powers of Criminal Courts Act 1973 (all of which regulate the making of probation orders which include any such requirement) shall apply to the making of an order which includes any such requirement by virtue of this subsection as they apply to the making of an order which includes any such requirement by virtue of section 385 of this Act and section 3 of the said Act of 1973 respectively; and
  - (b) subsections (4) to (6) of section 3 of the said Act of 1973 (functions of supervising officer and medical practitioner where such a requirement has been imposed) shall apply in relation to a probationer who is undergoing

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*Status: Point in time view as at 23/04/1991. This version of this part contains provisions that are prospective.*  
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treatment in England in pursuance of a requirement imposed by virtue of this subsection as they apply in relation to a probationer undergoing such treatment in pursuance of a requirement imposed by virtue of that section.

- (4) Sections 386(1) and 387(1) of this Act shall not apply to any order made or amended under this section; but subject as hereinafter provided the provisions of the <sup>M68</sup>Powers of Criminal Courts Act 1973 (except section 8 of that Act) shall apply to the order as if it were a probation order made under section 2 of that Act:

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

- (5) If it appears on information to a justice acting for the petty sessions area for which the supervising court within the meaning of the <sup>M68</sup>Powers of Criminal Courts Act 1973 acts that a person in whose case a probation order has been made or amended under this section has been convicted by a court in any part of Great Britain of an offence committed during the period specified in the order, he may issue a summons requiring that person to appear, at the place and time specified therein, before the court in Scotland by which the probation order was made or, if the information is in writing and on oath, may issue a warrant for his arrest, directing that person to be brought before the last-mentioned court.
- (6) If a warrant for the arrest of a probationer issued under section 388 of this Act by a court is executed in England, and the probationer cannot forthwith be brought before that court, the warrant shall have effect as if it directed him to be brought before a magistrates' court for the place where he is arrested; and the magistrates' court shall commit him to custody or release him on bail (with or without sureties) until he can be brought or appear before the court in Scotland.
- (7) The court by which a probation order is made or amended in accordance with the provisions of this section shall send three copies of the order to the clerk to the justices for the petty sessions area named therein, together with such documents and information relating to the case as it considers likely to be of assistance to the court acting for that petty sessions area.
- (8) Where a probation order which is amended under subsection (2) of this section is an order to which the provisions of this Act apply by virtue of section 10 of the <sup>M68</sup>Powers of Criminal Courts Act 1973 (which relates to probation orders under that Act relating to persons residing in Scotland) then, notwithstanding anything in that section or this section, the order shall, as from the date of the amendment, have effect in all respects as if it were an order made under section 2 of that Act in the case of a person residing in England.

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#### Textual Amendments

**F193** Words inserted by Community Service by [Offenders \(Scotland\) Act 1978 \(c. 49, SIF 39:1\)](#), [Sch. 2 para. 3](#)

*Status: Point in time view as at 23/04/1991. This version of this part contains provisions that are prospective.*

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### Marginal Citations

M68 1973 c. 62(39:1).

## 390 Further provisions as to probation orders.

- (1) Where the court by which a probation order is made under section 384 of this Act or subsection (6) of this section is satisfied that the person to whom the order relates is under the age of 17 years and resides or will reside in England, subsection (2) of the said section 384 shall not apply to the order but the order shall name the petty sessions area in which that person resides or will reside and the court shall send notification of the order to the clerk to the justices for that area.
- (2) Where a probation order has been made under section 384 of this Act or subsection (6) of this section, and the court which made the order or the appropriate court is satisfied that the person to whom the order relates is under the age of 17 years and proposes to reside or is residing in England, the power of that court to amend the order under Schedule 5 to this Act shall include power, without summoning him and without his consent, to insert in the order the name of the petty sessions area aforesaid; and where the court exercises the power conferred on it by virtue of this subsection it shall send notification of the order to the clerk aforesaid.
- (3) A court which sends a notification to a clerk in pursuance of the foregoing provisions of this section shall send to him with it three copies of the probation order in question and such other documents and information relating to the case as it considers likely to be of assistance to the juvenile court mentioned in the following subsection.
- (4) It shall be the duty of the clerk to whom a notification is sent in pursuance of the foregoing provisions of this section to refer the notification to a juvenile court acting for the petty sessions area named in the order, and on such a reference the court—
  - (a) may make a supervision order under the <sup>M69</sup>Children and Young Persons Act 1969 in respect of a person to whom the notification relates; and
  - (b) if it does not make such an order, shall dismiss the case.
- (5) A supervision order made by virtue of the last foregoing subsection shall not include a requirement authorised by section 12 of the said Act of 1969 unless the supervised person is before the court when the supervision order is made, and in relation to a supervision order made by virtue of that subsection—
  - (a) section 15 of that Act shall have effect as if, in subsection (4), paragraph (b) and the words following it were omitted; and
  - (b) section 17(a) of that Act shall have effect as if the second reference to the supervision order were a reference to the probation order in consequence of which the supervision order is made;

and when a juvenile court disposes of a case referred to it in pursuance of the last foregoing subsection, the probation order in consequence of which the reference was made shall cease to have effect.
- (6) The court which, in pursuance of subsection (1) of section 73 of the <sup>M70</sup>Social Work (Scotland) Act 1968, considers a case referred to it in consequence of a notification under paragraph (b) of that subsection (which relates to a case in which a person subject to a supervision order made by virtue of this section moves to Scotland)—



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- (a) may, if it is of opinion that the person to whom the notification relates should continue to be under supervision, make a probation order in respect of him for a period specified in the order; and
- (b) if it does not make such an order, shall dismiss the case;
- and when the court disposes of a case in pursuance of this subsection the supervision order aforesaid shall cease to have effect.
- (7) Notwithstanding any provision to the contrary in section 384 of this Act, a probation order made by virtue of the last foregoing subsection which includes only requirements having the like effect as any requirement or provision of the supervision order to which the notification relates may be made without summoning the person to whom the notification relates and without his consent, and shall specify a period of supervision which shall expire not later than the date on which that supervision order would have ceased to have effect by the effluxion of time; and, except as aforesaid, the provisions of this Act shall apply to that probation order.
- (8) In this and the last foregoing section, “petty sessions area” has the same meaning as in the said Act of 1969.

#### Marginal Citations

**M69** 1969 c. 54(20).

**M70** 1968 c. 49(81:3).

### 391 Supplementary provisions as to probation.

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

### 392 Effects of probation and absolute discharge.

- (1) Subject as hereinafter provided, a conviction . . . <sup>F194</sup> of an offence for which an order is made . . . <sup>F194</sup> placing the offender on probation or discharging him absolutely shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of laying it before a court as a previous conviction in subsequent proceedings for another offence:

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

- (2) Without prejudice to the foregoing provisions of this section, the conviction of an offender who is placed on probation or discharged absolutely as aforesaid shall in any event be disregarded for the purposes of any enactment which imposes any disqualification or disability upon convicted persons, or authorises or requires the imposition of any such disqualification or disability.

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- (3) The foregoing provisions of this section shall not affect—
- (a) any right of any such offender as aforesaid to appeal against his conviction; or
  - (b) the operation, in relation to any such offender, of any enactment which was in force as at the commencement of section 9(3)(b) of the <sup>M71</sup>Criminal Justice (Scotland) Act 1949 and is expressed to extend to persons dealt with under section 1(1) of the <sup>M72</sup>Probation of Offenders Act 1907 as well as to convicted persons.
- (4) Where an offender is placed on probation or discharged absolutely by a court of summary jurisdiction, he shall have the like right of appeal against the finding that he committed the offence as if that finding were a conviction.
- (5) Where a person charged with an offence has at any time previously been placed on probation or discharged absolutely in respect of the commission by him of an offence, it shall be competent, in the proceedings for that offence, to bring before the court the probation order or order of absolute discharge in like manner as if the order were a conviction.

#### Textual Amendments

**F194** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 63:1\), Sch. 6 para. 1, Sch. 8](#)

#### Modifications etc. (not altering text)

- C54** S. 392 amended by [Licensed Premises \(Exclusion of Certain Persons\) Act 1980 \(c. 32, SIF 68A:1, 2\), s. 1\(2\)\(c\)](#)
- C55** S. 392 excluded by [Road Traffic Act 1972 \(c. 20, SIF 107:1\), ss. 93\(8\), 101\(8\)](#) (as added by [Criminal Justice Act 1980 \(c. 62, SIF 39:1\), s. 55](#)) and [Police and Criminal Evidence Act 1984 \(c. 60, SIF 95\), s. 75\(3\)\(b\)](#)
- C56** S. 392 excluded by [Road Traffic Offenders Act 1988 \(c. 53, SIF 107:1\), s.46\(3\)](#) and by [S.I. 1989/1341 \(N.I. 12\), art. 73\(3\)\(c\)](#)

#### Marginal Citations

- M71** 1949 c. 94.(39:1).
- M72** 1907 c. 17.

### 393 Probation reports.

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

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

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### *Penalties for Statutory Offences*

#### **394 Power to mitigate penalties.**

In a summary prosecution for the contravention of any statute or order, where such contravention involves any of the following punishments, namely imprisonment, the imposition of a fine, the finding of caution for good behaviour or otherwise, either singly or in combination with imprisonment or fine, the court shall have in addition to any other powers conferred by Act of Parliament the following powers, viz.:—

- (a) to reduce the period of imprisonment;
- [<sup>F195</sup>(b) to substitute for imprisonment a fine which in the case of an offence triable either summarily or on indictment shall not exceed the prescribed sum (within the meaning of section 289B above), and in the case of an offence triable only summarily shall not exceed [<sup>F196</sup>level 4 on the standard scale] (in either case, with or without caution for good behaviour, not exceeding the amount and the period competent under this Part of this Act):]
- (c) to substitute the finding of caution as provided for in this Part of this Act for a fine or imprisonment;
- (d) to reduce the amount of any fine;
- (e) to dispense with the finding of caution:

Provided that—

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

#### **Textual Amendments**

**F195** S. 394(b) substituted by [Criminal Law Act 1977 \(c. 45, SIF 39:1\)](#), [Sch. 11 para. 7](#)

**F196** Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 56, [Sch. 7](#)

### *Fines*

#### **395 Provisions as to fines.**

- (1) A court of summary jurisdiction in determining the amount of any fine to be imposed on an offender shall take into consideration, amongst other things, the means of the offender so far as known to the court.
- (2) Where a court of summary jurisdiction imposes a fine on an offender, the court may order him to be searched, and any money found on him on apprehension or when so searched or when taken to prison or to a [<sup>F197</sup>young offenders institution] in default of payment of the fine, may, unless the court otherwise directs, be applied towards payment of the fine, and the surplus if any shall be returned to him:

Provided that the money shall not be so applied if the court is satisfied that it does not belong to the person on whom it was found or that the loss of the money will be more injurious to his family than his imprisonment or detention.

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- (3) When a court of summary jurisdiction, which has adjudged that a sum of money shall be paid by an offender, shall consider that any money found on the offender on apprehension, or after he has been searched by order of the court, should not be applied towards payment of such sum, the court shall make a direction in writing to that effect which shall be written on the extract of the sentence which imposes the fine before the same is issued by the clerk of the court.
- (4) An accused may make an application to such a court either orally or in writing, through the governor of the prison in whose custody he may be at the time, that any sum of money which shall have been found on his person should not be applied in payment of the fine adjudged to be paid by him.
- (5) A person who alleges that any money found on the person of an offender is not the property of the offender, but belongs to such person, may apply to such court either orally or in writing for a direction that such money should not be applied in payment of the fine adjudged to be paid, and the court after enquiry may so direct.
- (6) A court of summary jurisdiction, which has adjudged that a sum of money shall be paid by an offender, may order the attendance in court of the offender, if he is in prison, for the purpose of ascertaining the ownership of money which shall have been found on his person.
- (7) A notice in the form, as nearly as may be, of the appropriate form contained in an Act of Adjournal under this Act, addressed to the governor of the prison in whose custody an offender may be at the time, signed by the judge of a court of summary jurisdiction shall be a sufficient warrant to the governor of such prison for conveying the offender to the court.

#### Textual Amendments

**F197** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **Sch. 7 para. 60** and [S.I. 1983/1580, art. 3](#)

#### Modifications etc. (not altering text)

**C57** [S. 395\(1\)](#) excluded by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a), 56(9)(b)(i)**

### [<sup>F198</sup>395A] Power to remit fines.

- (1) A fine may at any time be remitted in whole or in part by—
  - (a) in a case where a transfer of fine order under section 403 of this Act is effective and the court by which payment is enforceable is, in terms of the order, a court of summary jurisdiction in Scotland, that court; or
  - (b) in any other case, the court which imposed the fine or (where that court was the High Court) by which payment was first enforceable.
- (2) Where the court remits the whole or part of a fine after imprisonment has been imposed under section 396(2) or (4) of this Act, it shall also remit the whole period of imprisonment or, as the case may be, reduce the period by an amount which bears the same proportion to the whole period as the amount remitted bears to the whole fine.
- (3) The power conferred by subsection (1) above shall be exercisable without requiring the attendance of the accused.]

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#### Textual Amendments

**F198** S. 395A inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 49

#### Modifications etc. (not altering text)

**C58** S. 395A(2) excluded by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 56(9)(b)(i)

### 396 Time for payment.

- (1) Where a court of summary jurisdiction has imposed a fine on an offender or ordered him to find caution, the court shall, subject to the provisions of the next following subsection, allow him at least seven days to pay the fine or the first instalment thereof or, as the case may be, to find caution; and any reference in this and the next following section to a failure to pay a fine or other like expression shall include a reference to a failure to find caution.
- (2) If on the occasion of the imposition of a fine—
  - (a) the offender appears to the court to possess sufficient means to enable him to pay the fine forthwith; or
  - (b) on being asked by the court whether he wishes to have time for payment, he does not ask for time; or
  - (c) he fails to satisfy the court that he has a fixed abode; or
  - (d) the court is satisfied for any other special reason that no time should be allowed for payment,the court may refuse him time to pay the fine and, if the offender fails to pay, may exercise its power to impose imprisonment and, if it does so, shall state the special reason for its decision.
- (3) In all cases where time is not allowed by a court of summary jurisdiction for payment of a fine, the reasons of the court for not so allowing time shall be stated in the extract of the finding and sentence as well as in the finding and sentence itself.
- (4) Where time is allowed for payment of a fine or payment by instalments is ordered, a court of summary jurisdiction shall not, on the occasion of the imposition of a fine, impose imprisonment in the event of a future default in paying the fine or an instalment thereof unless the offender is before it and the court determines that, having regard to the gravity of the offence or to the character of the offender, or to other special reason, it is expedient that he should be imprisoned without further inquiry in default of payment; and where a court so determines, it shall state the special reason for its decision.
- (5) Where a court of summary jurisdiction has imposed imprisonment in accordance with the provisions of the last foregoing subsection, then, if at any time the offender asks the court to commit him to prison, the court may do so notwithstanding subsection (1) of this section.
- (6) Nothing in the foregoing provisions of this section shall affect any power of a court of summary jurisdiction to order a fine to be recovered by civil diligence.
- (7) Where time has been allowed for payment of a fine imposed by a court of summary jurisdiction, the court may, subject to any rules under this part of this Act, on

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an application by or on behalf of the offender, and after giving the prosecutor an opportunity of being heard, allow further time for payment.

#### Modifications etc. (not altering text)

- C59** S. 396 applied with modifications by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 7(2), 47(4)(a)**
- C60** S. 396 extended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 80\(2\)\(a\)](#) (with [ss. 70\(2\), 113\(1\), Sch. 3 para. 4\(4\)](#)); [S.I. 1996/517, art. 3\(2\)](#), 4-6, **Sch. 2**
- C61** S. 396(1)–(6) excluded by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a), 56(9)(b)(i)**
- C62** S. 396(2) amended by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 41, **Sch. 6 para. 1**

### 397 Application for further time for payment of fine.

- (1) An application by an offender for further time in which to pay a fine adjudged to be paid by him by a court of summary jurisdiction, or of instalments thereof, shall be made to that court, except in a case where a transfer of fine order shall have been made under section 403 of this Act [<sup>F199</sup>, under [<sup>F200</sup>section 90 of the <sup>M73</sup>Magistrates' Courts Act 1980] or under [<sup>F201</sup>Article 95 of the <sup>M74</sup>Magistrates' Courts (Northern Ireland) Order 1981]] in which case the application shall be made to the court specified in the transfer order, or to the court specified in the last transfer order where there is more than one transfer.
- (2) A court to which an application is made under the foregoing subsection shall allow further time for payment of the fine or of instalments thereof, unless it is satisfied that the failure of the offender to make payment has been wilful or that the offender has no reasonable prospect of being able to pay if further time is allowed.
- (3) An application made under this section to a court of summary jurisdiction may be made orally or in writing.

#### Textual Amendments

- F199** Words substituted by [Criminal Law Act 1977 \(c. 45, SIF 39:1\)](#), **Sch. 11 para. 8**
- F200** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 39:1\)](#), s. 154, **Sch. 7 para. 136**
- F201** Words substituted by [S.I. 1981/1675 \(N.I. 26\)](#), **Sch. 6 Pt. I para. 36**

#### Modifications etc. (not altering text)

- C63** [Ss. 397, 398](#) applied by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 7(2), 47(4)(a)**
- C64** S. 397 extended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 80\(2\)\(b\)](#) (with [ss. 70\(2\), 113\(1\), Sch. 3 para. 4\(4\)](#)); [S.I. 1996/517, arts. 3\(2\), 4-6](#), **Sch. 2**

#### Marginal Citations

- M73** [1980 c. 43\(39:1\)](#).
- M74** [S.I. 1981/1675 \(N.I. 26\)](#).

### 398 Restriction on imprisonment after fine or caution.

- (1) Where a court of summary jurisdiction has imposed a fine or ordered the finding of caution without imposing imprisonment in default of payment, it shall not impose

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imprisonment on an offender for failing to make payment of the fine, unless on an occasion subsequent to that sentence the court has enquired into [<sup>F202</sup>in his presence the reason why the fine has not been paid]; but this subsection shall not apply where the offender is in prison.

- (2) A court of summary jurisdiction may, for the purpose of enabling enquiry to be made under this section—
  - (a) issue a citation requiring the offender to appear before the court at a time and place appointed in the citation; or
  - (b) issue a warrant of apprehension.
- (3) On the failure of the offender to appear before the court in response to a citation under this section, the court may issue a warrant of apprehension.
- (4) A warrant of apprehension issued by a court of summary jurisdiction under subsection (2) of this section shall be in the form, as nearly as may be, of the appropriate form contained in an Act of Adjournal under this Act.
- (5) The minute of procedure in relation to an enquiry into the means of an offender under this section shall be in the form, as nearly as may be, of the appropriate form contained in an Act of Adjournal under this Act.

#### Textual Amendments

**F202** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 61](#)

#### Modifications etc. (not altering text)

**C65** Ss. 397, 398 applied by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), [ss. 7\(2\)](#), 47(4)(a)

**C66** [S. 398\(1\)](#) extended (with modifications) (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1996 c. 20, s. 80\(2\)\(c\)](#) (with [ss. 70\(2\)](#), [113\(1\)](#), [Sch. 3 para. 4\(4\)](#)); [S.I. 1996/517](#), [arts. 3\(2\)](#), 4-6, [Sch. 2](#)

### 399 Payment by instalments.

- (1) Without prejudice to the operation of section 396(2) of this Act, where a court of summary jurisdiction has imposed a fine on an offender, the court may, of its own accord or on the application of the offender, order payment of that fine by instalments of such amounts and at such time as it may think fit, . . . <sup>F203</sup>.

[<sup>F204</sup>(2) Where the court has ordered payment of a fine by instalments it may—

- (a) allow further time for payment of any instalment thereof;
- (b) order payment thereof by instalments of lesser amounts, or at longer intervals, than those originally fixed.

- (3) The powers conferred by subsection (2) above shall be exercisable without requiring the attendance of the accused.]

#### Textual Amendments

**F203** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 6 para. 3](#), [Sch. 8](#)

**F204** [S. 399\(2\)\(3\)](#) substituted for [s. 399\(2\)](#) by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 6 para. 3](#), [Sch. 7 para. 62\(b\)](#)

*Status: Point in time view as at 23/04/1991. This version of this part contains provisions that are prospective.*

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#### **Modifications etc. (not altering text)**

- C67** S. 399 applied with modifications by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 7(2), 47(4)(a)**
- C68** S. 399 extended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 80\(2\)\(d\)](#) (with [ss. 70\(2\), 113\(1\), Sch. 3 para. 4\(4\)](#)); [S.I. 1996/517](#), arts. 3(2), 4-6, **Sch. 2**

#### **400 Supervision pending payment of fine.**

- (1) Where an offender has been allowed time for payment of a fine by a court of summary jurisdiction, the court may, either on the occasion of the imposition of the fine or on a subsequent occasion, order that he be placed under the supervision of such person as the court may from time to time appoint for the purpose of assisting and advising the offender in regard to payment of the fine.
- (2) An order made in pursuance of the foregoing subsection shall remain in force so long as the offender to whom it relates remains liable to pay the fine or any part of it unless the order ceases to have effect or is discharged under the next following subsection.
- (3) An order under this section shall cease to have effect on the making of a transfer of fine order under section 403 of this Act in respect of the fine or may be discharged by the court that made it without prejudice, in either case, to the making of a new order.
- (4) Where an offender under 21 years of age has been allowed time for payment of a fine by a court of summary jurisdiction, the court shall not order the form of detention appropriate to him in default of payment of the fine unless he has been placed under supervision in respect of the fine or the court is satisfied that it is impracticable to place him under supervision.
- (5) Where a court being satisfied as aforesaid, orders the detention of a person under 21 years of age without an order under this section having been made, the court shall state the grounds on which it is so satisfied.
- (6) Where an order under this section is in force in respect of an offender, the court shall not impose imprisonment in default of the payment of the fine unless the court has, before so doing, taken such steps as may be reasonably practicable to obtain from the person appointed for the supervision of the payment of his fine a report, which may be oral, on the offender's conduct and means, and shall consider any report so obtained in addition, in a case where an enquiry is required by section 398 of this Act, to that enquiry.
- (7) When a court of summary jurisdiction shall have made an order under subsection (1) of this section placing an offender under the supervision of another person, a notice shall be sent by the clerk of the court to such offender in the form, as nearly as may be, of the appropriate form contained in an Act of Adjournal under this Act.
- (8) The person appointed to supervise such an offender shall communicate with him with a view to assisting and advising him in regard to payment of the fine, and unless the same or any instalment thereof shall have been paid to the clerk of the court within the time allowed by the court for payment, the person so appointed shall report to the court without delay after the expiry of such time, as to the conduct and means of the offender.



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#### Modifications etc. (not altering text)

- C69** S. 400 applied by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 7(2)**, 47(4)(a)
- C70** S. 400 extended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 80(2)(e)** (with ss. 70(2), 113(1), Sch. 3 para. 4(4)); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

### 401 Supplementary provisions as to payment of fine.

- (1) Where under the provisions of section 396 or 400 of this Act a court is required to state a special reason for its decision or the grounds on which it is satisfied that it is undesirable or impracticable to place an offender under supervision, the reason or, as the case may be, the grounds shall be entered in the record of the proceedings along with the finding and sentence.
- (2) Any reference in the sections last mentioned to imprisonment shall be construed, in the case of an offender on whom by reason of his age imprisonment may not lawfully be imposed, as a reference to the lawful form of detention in default of payment of a fine appropriate to that person, and any reference to prison shall be construed accordingly.
- [<sup>F205</sup>(3) Where a warrant has been issued for the apprehension of an offender for non-payment of a fine, the offender may, notwithstanding section 412 of this Act, pay such fine in full to a constable; and the warrant shall not then be enforced and the constable shall remit the fine to the clerk of court.]

#### Textual Amendments

- F205** S. 401(3) added by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 63**

#### Modifications etc. (not altering text)

- C71** S. 401(2)(3) extended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 80(2)(f)** (with ss. 70(2), 113(1), Sch. 3 para. 4(4)); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- C72** S. 401(2)(3) applied by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 7(2)**, 47(4)(a)

### 402 Fines, etc., may be enforced in other district.

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

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

#### Modifications etc. (not altering text)

- C73** S. 402 extended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 80(1)** (with ss. 70(2), 113(1), Sch. 3 para. 4(4)); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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### 403 Transfer of fine orders.

- (1) Where a court of summary jurisdiction has imposed a fine on a person convicted of an offence and it appears to the court that he is residing—
- (a) within the jurisdiction of another court of summary jurisdiction in Scotland, or
  - (b) in any petty sessions area in England and Wales [<sup>F206</sup>, or
  - (c) in any petty sessions district in Northern Ireland]

the court, . . . <sup>F207</sup> may order that payment of the fine shall be enforceable by that other court of summary jurisdiction or in that petty sessions area, [<sup>F206</sup> or petty sessions district] as the case may be.

- (2) An order under this section (in this section referred to as a transfer of fine order) shall specify the court by which or the petty sessions area [<sup>F208</sup> or petty sessions district] in which payment is to be enforceable and, where the court to be specified in a transfer of fine order is a court of summary jurisdiction, it shall, in any case where the order is made by the sheriff court, be a sheriff court.

- (3) Where a transfer of fine order is made with respect to any fine under this section, any functions under any enactment relating to that sum which, if no such order had been made, would have been exercisable by the court which made the order or by the clerk of that court shall cease to be so exercisable.

- (4) Where a transfer of fine order [<sup>F209</sup> under this section, [<sup>F210</sup> section 90 of the <sup>M75</sup>Magistrates' Courts Act 1980] or [<sup>F211</sup> Article 95 of the <sup>M76</sup>Magistrates' Courts (Northern Ireland) Order 1981]] specifies a court of summary jurisdiction in Scotland, that court and the clerk of that court shall have all the like functions under this Part of this Act in respect of the fine or the sum in respect of which that order was made (including the power to make any further order under this section) as if the fine or the sum were a fine imposed by that court and as if any order made under this section [<sup>F209</sup>, [<sup>F210</sup> the said Act of 1980] or [<sup>F211</sup> the said Order of 1981]] in respect of the fine or the sum before the making of the transfer of fine order had been made by that court:

Provided that for the purpose of determining the period of imprisonment which may be imposed under this Part of this Act by any court having jurisdiction in respect of a sum adjudged to be paid by a conviction of a magistrates' court acting for a petty sessions area, section 407 of this Act shall have effect as if for the Table set out in subsection (1) of that section there were substituted [<sup>F210</sup> the Table set out in paragraph 1 of Schedule 4 to the said Act of 1980] . . . <sup>F207</sup>.

- (5) . . . . . <sup>F212</sup>

- (6) Where a transfer of fine order under [<sup>F213</sup> section 90 of the <sup>M77</sup>Magistrates' Courts Act 1980][<sup>F214</sup> Article 95 of the <sup>M78</sup>Magistrates' Courts (Northern Ireland) Order 1981] or this section provides for the enforcement by a sheriff court in Scotland of a fine imposed by the Crown Court, the proviso to subsection (4) of this section shall not apply, but the term of imprisonment which may be imposed under this Part of this Act shall be the term fixed in pursuance of section 31 of the <sup>M79</sup>Powers of Criminal Courts Act 1973 by the Crown Court or a term which bears the same proportion to the term so fixed as the amount of the fine remaining due bears to the amount of the fine imposed by that court, notwithstanding that the term exceeds the period applicable to the case under section 407 of this Act.

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### Textual Amendments

- F206** S. 137A inserted (18.9.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(5)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(3), 5(b), **Sch.2**
- F207** S. 155A inserted (18.9.1993) by 1993 c. 9, s. 40(1) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), **Sch.2**
- F208** S. 179(2)(a) substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 36(b)**
- F209** S. 179(2) added by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), s. 5(b)
- F210** Words substituted by Magistrates' Courts Act 1980 (c. 43, SIF 39:1), s. 154, **Sch. 7 para. 137(a)**
- F211** S. 254(4A) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(7)(c)**
- F212** Word inserted by virtue of Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 25**
- F213** Words substituted by Magistrates' Courts Act 1980 (c. 43, SIF 39:1), s. 154, **Sch. 7 para. 137(b)**
- F214** Words in s. 254(4) inserted (27.7.1993) by 1993 c. 36, s. 79(13), Sch. 5 Pt. I para. 2(7)(b)

### Modifications etc. (not altering text)

- C74** S. 403 applied with modifications by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 7(2), 47(4)(a)**
- C75** S. 403(6) excluded by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a), 56(9)(b)(i)**

### Marginal Citations

- M75** 1980 c. 43(82).
- M76** S.I. 1981/1675 (N.I. 26).
- M77** 1980 c. 43(82).
- M78** S.I. 1981/1675 (N.I. 26)
- M79** 1973 c. 62(39:1).

## 404 Action of clerk of court on transfer of fine orders.

- (1) Where a court of summary jurisdiction makes a transfer of fine order under section 403 of this Act, the clerk of the court shall send to the clerk of the court specified in the order a notice in the form, as nearly as may be, of the appropriate form contained in an Act of Adjournal under this Act, and shall at the same time send to that clerk a statement of the offence of which the offender was convicted, and of the steps if any which shall have been taken to recover the fine, and shall give him such further information if any as, in his opinion, is likely to assist the court specified in the order in recovering the fine.
- (2) In the case of a further transfer of fine order the clerk of the court which shall have made the order shall send to the clerk of the court by which the fine was imposed a copy of the notice which shall have been sent to the clerk of the court specified in the order.
- (3) The clerk of the court specified in a transfer of fine order shall, as soon as may be after he has received the notice prescribed in subsection (1) of this section, send an intimation to the offender in the form, as nearly as may be, of the appropriate form contained in an Act of Adjournal under this Act.
- (4) The clerk of the court specified in a transfer of fine order shall remit or otherwise account for any payment received in respect of the fine, to the clerk of the court by which the fine was imposed, and if the sentence shall have been enforced otherwise

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than by payment of the fine, he shall inform the clerk of that court how the sentence was enforced.

**Modifications etc. (not altering text)**

- C76** Ss. 404, 406 applied by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 7(2)**, 47(4)(a)
- C77** Ss. 404, 406 excluded by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a)**, 56(9)(b) (i)
- C78** S. 404 extended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 80(2)(h)** (with ss. 70(2), 113(1), Sch. 3 para. 4(4)); S.I. 1996/517, art. 3(2), 4-6, **Sch. 2**

**405** ..... **F215**

**Textual Amendments**

- F215** Ss. 405, 410 repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **Sch. 8**

**406 Substitution of custody for imprisonment where a child defaults on fine.**

Where a child would, if he were an adult, be liable to be imprisoned in default of payment of any fine, damages or expenses, the court may, if it considers that none of the other methods by which the case may legally be dealt with is suitable, order that the child be detained for such period, not exceeding one month, as may be specified in the order in a place chosen by the local authority in whose area the court is situated.

**Modifications etc. (not altering text)**

- C79** Ss. 404, 406 applied by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 7(2)**, 47(4)(a)
- C80** Ss. 404, 406 excluded by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a)**, 56(9)(b) (i)

**407 Period of imprisonment for non-payment of fine.**

[<sup>F216</sup>(1) Subject to sections 396 to 401 of this Act—

- (a) a court of summary jurisdiction may, when imposing a fine, impose a period of imprisonment in default of payment; or
- (b) where no order has been made under paragraph (a) above and a person fails to pay a fine, or any part or instalment of a fine, by the time ordered by the court (or, where section 396(2) of this Act applies, immediately) the court may impose a period of imprisonment for such failure [<sup>F217</sup>either with immediate effect or to take effect in the event of the person failing to pay the fine or any part or instalment of it by such further time as the court may order],

whether or not the fine is imposed under an enactment which makes provision for its enforcement or recovery.

- (1A) Subject to the following subsections of this section, the maximum period of imprisonment which may be imposed under subsection (1) above or for failure to find caution, shall be as follows—

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<b>Amount of fine or of caution</b>	<b>Maximum period of imprisonment</b>
Not exceeding [ <sup>F218</sup> £50]	7 days
Exceeding [ <sup>F218</sup> £50] but not exceeding [ <sup>F218</sup> £100]	14 days
Exceeding [ <sup>F218</sup> £100] but not exceeding [ <sup>F218</sup> £400]	30 days
Exceeding [ <sup>F218</sup> £400] but not exceeding [ <sup>F218</sup> £1,000]	60 days
Exceeding [ <sup>F218</sup> £1,000] but not exceeding [ <sup>F218</sup> £2,000]	90 days
Exceeding [ <sup>F218</sup> £2,000] but not exceeding [ <sup>F218</sup> £5,000]	6 months
Exceeding [ <sup>F218</sup> £5,000] but not exceeding [ <sup>F218</sup> £10,000]	9 months
Exceeding [ <sup>F218</sup> £10,000][ <sup>F219</sup> but not exceeding £20,000]	12 months
[ <sup>F220</sup> Exceeding £20,000 but not exceeding £50,000]	18 months
[ <sup>F221</sup> Exceeding £50,000 but not exceeding £100,000]	[ <sup>F221</sup> 2 years.]
[ <sup>F221</sup> Exceeding £100,000 but not exceeding £250,000]	[ <sup>F221</sup> 3 years.]
[ <sup>F221</sup> Exceeding £250,000 but not exceeding £1 million]	[ <sup>F221</sup> 5 years.]
[ <sup>F221</sup> Exceeding £1 million]	[ <sup>F221</sup> 10 years.]

(1B) Where an offender is fined on the same day before the same court for offences charged in the same complaint or in separate complaints, the amount of the fine shall, for the purposes of this section, be taken to be the total of the fines imposed.

(1C) Where a court has imposed a period of imprisonment in default of payment of a fine, and—

- (a) an instalment of the fine is not paid at the time ordered; or
- (b) part only of the fine has been paid within the time allowed for payment,

the offender shall be liable to imprisonment for a period which bears to the period so imposed the same proportion, as nearly as may be, as the amount outstanding at the time when warrant is issued for imprisonment of the offender in default bears to the original fine.

(1D) Where no period of imprisonment in default of payment of a fine has been imposed and—

- (a) an instalment of the fine is not paid at the time ordered; or
- (b) part only of the fine has been paid within the time allowed for payment,

the offender shall be liable to imprisonment for a maximum period which bears, as nearly as may be, the same proportion to the maximum period of imprisonment which

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could have been imposed by virtue of the Table in subsection (1A) above in default of payment of the original fine as the amount outstanding at the time when he appears before the court bears to the original fine.]

- (2) If in any sentence or extract sentence the period of imprisonment inserted in default of payment of a fine or on failure to find caution is in excess of that competent under this Part of this Act, such period of imprisonment shall be reduced to the maximum period under this Part of this Act applicable to such default or failure, and the judge who pronounced the sentence shall have power to order the sentence or extract to be corrected accordingly.
- (3) The periods of imprisonment set forth in [<sup>F222</sup>subsection (1A)] of this section shall apply to the non-payment of any sum imposed as aforesaid by a court of summary jurisdiction under a statute or order passed or made before the first day of June 1909, notwithstanding that that statute or order fixes any other period of imprisonment.
- (4) The provisions of this section shall be without prejudice to the operation of section 409 of this Act.

[<sup>F223</sup>(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 <sup>M80</sup>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.]

#### Textual Amendments

**F216** S. 407(1)–(1D) substituted for s. 407(1) by Criminal Justice (Scotland) Act 1980 (c. 62), s. 50, **Sch. 6 para. 3**

**F217** S. 110 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. 1 para. 40, Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

**F218** Words substituted by S.I. 1984/526, **art. 5**

**F219** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 39:1), s. 40(a), **Sch. 3 para. 4**

**F220** Words added by virtue of Law Reform (Miscellaneous Provisions) Act 1985 (c. 73, SIF 39:1), s. 40(b), **Sch. 3 para. 4**

**F221** S. 114A inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 41**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

**F222** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 6 para. 3, Sch. 7 para. 64**

**F223** S. 407(5) added by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a), 67(2)**

#### Modifications etc. (not altering text)

**C81** S. 407 applied with modifications by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 7(2), 25(4)(b), 47(4)(a)**

**C82** S. 407 excluded (except subsection (1)(b)) by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a), 56(9)(b)(i)**

**C83** S. 407(1A) modified (1.7.1991) by Criminal Justice (International Co-operation) Act 1990 (c. 5, SIF 39:1), **ss. 15(2), 17(4)(b)**; S.I. 1991/1072, **art. 2(b)**, **Sch. Pt. II**

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### Marginal Citations

**M80** 1980 c.62(39:1).

## 408 Discharge from imprisonment to be specified.

All warrants of imprisonment for payment of a fine, or for finding of caution, shall specify a period at the expiry of which the person sentenced shall be discharged, notwithstanding such fine shall not have been paid, or caution found.

### Modifications etc. (not altering text)

**C84** S. 408 applied by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 7(2)**, 47(4)(a)

**C85** S. 408 excluded by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a)**, 56(9)(b)(i)

## 409 Payment of fine in part by prisoner.

- (1) Where a person committed to prison or otherwise detained for failure to pay a fine imposed by a court of summary jurisdiction pays to the governor of the prison, under conditions prescribed by rules made under the <sup>M81</sup>Prisons (Scotland) Act 1952, any sum in part satisfaction of the fine, the term of imprisonment shall be reduced [<sup>F224</sup>(or as the case may be further reduced) by a number of days bearing as nearly as possible the same proportion to such term as the sum so paid bears to the amount of the fine outstanding at the commencement of the imprisonment:]

[<sup>F224</sup>Provided that the day on which any sum is paid shall not be regarded as a day served by the prisoner as part of the said term of imprisonment.]

- (2) In this section references to a prison and to the governor thereof shall include respectively references to any other place in which a person may be lawfully detained in default of payment of a fine, and to an officer in charge thereof.
- (3) Provision may be made by Act of Adjournment for the application of sums paid under this section and for any matter incidental thereto.
- (4) The provision of Schedule 7 to this Act shall apply for the purposes of this section.

### Textual Amendments

**F224** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **Sch. 7 para. 65**

### Modifications etc. (not altering text)

**C86** S. 409 applied with modifications by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 7(2)**, 47(4)(a)

**C87** S. 409 excluded by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a)**, 56(9)(b)(i)

**C88** S. 409 extended (with modifications) (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 80\(2\)\(1\)](#) (with [ss. 70\(2\)](#), [113\(1\)](#), [Sch. 3 para. 4\(4\)](#)); [S.I. 1996/517](#), [arts. 3\(2\)](#), 4-6, **Sch. 2**

### Marginal Citations

**M81** 1952 c. 61(39:1).

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410 ..... F225

**Textual Amendments**  
 F225 Ss. 405, 410 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 8

**411 Recovery by civil diligence.**

- (1) Where any fine falls to be recovered by civil diligence in pursuance of this Part of this Act or in any case in which a court of summary jurisdiction may think it expedient to order a fine to be recovered by civil diligence, there shall be added to the finding of the court imposing the fine [<sup>F226</sup>a warrant for civil diligence in a form prescribed by Act of Adjournal which shall have the effect of authorising—
- (a) the charging of the person who has been fined to pay the fine within the period specified in the charge and, in the event of failure to make such payment within that period, the execution of an earnings arrestment and the pouncing of articles belonging to him and, if necessary for the purpose of executing the pouncing, the opening of shut and lockfast places;
  - (b) an arrestment other than an arrestment of earnings in the hands of his employer;]

and such diligence, whatever the amount of the fine imposed, may be executed in the same manner as if the proceedings were on an extract decree of the sheriff [<sup>F227</sup>in a summary cause].

(2) ..... F228

- (3) Proceedings by civil diligence under this section may be adopted at any time after the imposition of the fine to which they relate:

Provided that no such proceedings shall be authorised after the [<sup>F229</sup>offender has been imprisoned in consequence of his having defaulted in] payment of the fine.

**Textual Amendments**  
 F226 Words substituted by virtue of the Debtors (Scotland) Act 1987 (c. 18, SIF 45:2), s. 108(1), Sch. 6 para. 18 Sch. 7 para. 5  
 F227 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 3, Sch. 7 para. 66  
 F228 S. 411(2) repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para 3, Sch. 8  
 F229 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 52, Sch. 6 para. 3

**Modifications etc. (not altering text)**  
 C89 S. 411 applied with modifications by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 7(2), 47(4)(a)  
 C90 S. 411 applied (12.8.1991) by Dangerous Dogs Act 1991 (c. 65, SIF 4:1), s. 4(9)(c); S.I. 1991/1742, art. 3  
 C91 S. 411 extended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 80(2)(m) (with ss. 70(2), 113(1), Sch. 3 para. 4(4)); S.I. 1996/517, arts. 3(2), 4-6, Sch. 2  
 C92 S. 411(3) excluded by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 56(9)(b)(i)



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*Status:* Point in time view as at 23/04/1991. This version of this part contains provisions that are prospective.  
*Changes to legislation:* Criminal Procedure (Scotland) Act 1975, Part II is up to date with all changes known to be in force on or before 12 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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## 412 Payment of fines to be made to clerk of court.

All fines and expenses imposed under this Part of this Act shall be paid to the clerk of court to be accounted for by him to the person entitled thereto, and it shall not be necessary to specify in any sentence the person entitled to payment of any such fine or expenses, unless where it is necessary to provide for the division of the penalty.

### Modifications etc. (not altering text)

**C93** S. 412 extended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 80(1) (with ss. 70(2), 100, 113(1), Sch. 3 para. 4(4)); S.I. 1996/517, arts. 3(2), 4-6, Sch. 2

### *Supervised attendance orders*

## 412A Supervised attendance orders in place of fines for 16 and 17 year olds.

- (1) This section applies where a person of 16 or 17 years of age is convicted of an offence by a court of summary jurisdiction and the court considers that, but for this section, the appropriate sentence is a fine.
- (2) Where this section applies, the court shall determine the amount of the fine and shall consider whether the person is likely to pay a fine of that amount within 28 days.
- (3) If the court considers that the person is likely to pay the fine as mentioned in subsection (2) above, it shall—
  - (a) impose the fine; and
  - (b) subject to paragraph 1 of Schedule 6 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (“the 1990 Act”), make a supervised attendance order in default of payment of the fine within 28 days.
- (4) A supervised attendance order made under subsection (3)(b) above—
  - (a) shall come into force on such date, not earlier than 28 days after the making of the order, as may be specified in the order, unless the person pays the fine within that period;
  - (b) shall, for the purposes of Schedule 6 to the 1990 Act, be deemed to be made on the date when it comes into force.
- (5) Where, before the coming into force of a supervised attendance order made under subsection (3)(b) above, the person pays part of the fine, the period specified in the order shall be reduced by the proportion which the part of the fine paid bears to the whole fine, the resulting figure being rounded up or down to the nearest 10 hours; but this subsection shall not operate to reduce the period to less than 10 hours.
- (6) If the court considers that the person is not likely to pay the fine as mentioned in subsection (2) above, it shall, subject to paragraph 1 of Schedule 6 to the 1990 Act, make a supervised attendance order in respect of that person.
- (7) Sections 395A to 398, 400 to 404 and 407 of this Act shall not apply in respect of a person to whom this section applies.
- (8) For the purposes of any appeal or review, a supervised attendance order made under this section is a sentence.

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- (9) In this section “supervised attendance order” means an order made in accordance with section 62(2), (5) and (6) of the 1990 Act.

**412B** <sup>F231</sup> **Supervised attendance orders where court allows further time to pay fine.**

- (1) Where a court, on an application to it under section 397(1) of this Act, allows a person further time for payment of a fine or instalments thereof it may, in addition, subject to paragraph 1 of Schedule 6 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (“the 1990 Act”), impose a supervised attendance order in default of payment of the fine or any instalment of it on the due date.
- (2) A supervised attendance order made under subsection (1) above —
- (a) shall, if the person fails to pay the fine or any instalment of it on the due date, come into force on the day after the due date; and
  - (b) shall, for the purposes of Schedule 6 to the 1990 Act, be deemed to be made on the date when it comes into force.
- (3) Where, before the coming into force of a supervised attendance order under subsection (1) above, the person pays part of the fine, the period specified in the order shall be reduced by the proportion which the part of the fine paid bears to the whole fine, the resulting figure being rounded up or down to the nearest 10 hours; but this subsection shall not operate to reduce the period to less than 10 hours.
- (4) In this section “supervised attendance order” means an order made in accordance with section 62(2), (5) and (6) of the 1990 Act.

*Residential and Borstal Training*

**[413** <sup>F232</sup> **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 <sup>M82</sup> Social Work (Scotland) Act 1968.

*Status: Point in time view as at 23/04/1991. This version of this part contains provisions that are prospective.*

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- (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 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.]

**Textual Amendments**

**F232** Words inserted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(1), [Sch. 1 para. 10\(a\)](#)

**Marginal Citations**

**M82** [1968 c.49 \(81:3\)](#).

**414** ..... **F233**

**Textual Amendments**

**F233** [S. 414](#) repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 45(3), [Sch. 6 para. 5](#), [Sch. 8](#) and [S.I. 1983/1580, art. 3](#)

**[<sup>F234</sup>415 Detention of young offenders.**

- (1) It shall not be competent to impose imprisonment on a person under 21 years of age.

*Status: Point in time view as at 23/04/1991. This version of this part contains provisions that are prospective.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1975, Part II is up to date with all changes known to be in force on or before 12 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Subject to subsections (3) and (4) below a court may impose detention (whether by way of sentence or otherwise) on a person, who is not less than 16 but under 21 years of age, where but for subsection (1) above the court would have power to impose a period of imprisonment; and the period of detention imposed under this section on any person shall not exceed the maximum period of imprisonment which might otherwise have been imposed.

(3) The court shall not under subsection (2) above impose detention on a person unless it is of the opinion that no other method of dealing with him is appropriate; and the court shall state its reasons for that opinion, and, except in the case of the High Court, those reasons shall be entered in the record of proceedings.

(4) To enable the court to form an opinion under subsection (3) above, it shall obtain (from an officer of a local authority or otherwise) such information as it can about the offender’s circumstances; and it shall also take into account any information before it concerning the offender’s character and physical and mental condition.

[ A sentence of detention imposed under this section shall be a sentence of detention <sup>F235</sup>(5) in a young offenders institution.]

(11) [<sup>F236</sup>Section 18 (functions of Parole Board), section 24 (remission for good conduct) and sections 22, 26, 28 and 29 (release on licence) of the Prisons (Scotland) Act 1989 shall apply] to a person sentenced under this section as those enactments apply to a person sentenced to a period of imprisonment.]

**Textual Amendments**

**F234** S. 415 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), ss. 45(1), **Sch. 6 para. 5** and S.I. 1983/1580, **art. 3**

**F235** Words substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 10(b)**

**F236** S. 384(1A) inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), **s. 61(1)(b)**; S.I. 1991/850, art. 3, **Schedule**

**Modifications etc. (not altering text)**

**C94** S. 415 extended by Contempt of Court Act 1981 (c. 49, SIF 39:3), **s. 15(3)**

**C95** S. 415 excluded by Repatriation of Prisoners Act 1984 (c. 47, SIF 39:1), s. 3, **Sch. para. 4(2)(b)**

416 ..... <sup>F237</sup>

**Textual Amendments**

**F237** S. 416 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 8** and S.I. 1983/1580, **art. 3**

417 ..... <sup>F238</sup>

*Status: Point in time view as at 23/04/1991. This version of this part contains provisions that are prospective.*  
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#### Textual Amendments

**F238** S. 417 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 8**

**418** ..... **F239**

#### Textual Amendments

**F239** S. 418 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 45(3), Sch. 6 para. 5, **Sch. 8** and S.I. 1983/1580, **art. 3**

**419,** ..... **F240**  
**420.**

#### Textual Amendments

**F240** Ss. 419, 420 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 5, **Sch. 8** and S.I. 1983/1580, **art. 3**

#### **421 Recall to young offenders institution on re-conviction.**

- (1) Where a person sentenced to detention . . . <sup>F241</sup> <sup>F242</sup> under section 415 of this Act], being under supervision after his release from such [<sup>F243</sup>detention], is convicted of an offence punishable with imprisonment, the court may, [<sup>F244</sup>, except where the person convicted is subject to a licence granted under section 60(1) or section 61 of the <sup>M83</sup>Criminal Justice Act 1967 [<sup>F245</sup>or section 22(1) or section 26 of the Prisons (Scotland) Act 1989], make an order for his recall.]
- (2) An order for the recall of a person made as aforesaid shall have the like effect as an order for recall made by the Secretary of State under section [<sup>F246</sup>32 of the said Act of 1989].

#### Textual Amendments

- F241** Words repealed by Criminal Justice Act 1982 (c. 48, SIF 39:1), **Sch. 16**
- F242** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 5, **Sch. 7 para. 67(a)** and S.I. 1983/1580, **art. 3**
- F243** Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **Sch. 15 para. 18(b)**
- F244** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 5, **Sch. 7 para. 67(b)** and S.I. 1983/1580, **art. 3**
- F245** Words in s. 384(4)(a) substituted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), **s. 61(1)(c)(i)**; S.I. 1991/850, art. 3, **Schedule**
- F246** Words substituted by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(1), **Sch. 2 para. 14**

#### Marginal Citations

**M83** 1967 c. 80.(39:1).

*Status: Point in time view as at 23/04/1991. This version of this part contains provisions that are prospective.*

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422 ..... F247

#### Textual Amendments

F247 S. 422 repealed by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(2), Sch. 3

### 423 Return to prison in case of breach of supervision.

- (1) If, on sworn information laid by or on behalf of the Secretary of State, it appears to the sheriff that a person, being under supervision under [F248]section 30 of the Prisons (Scotland) Act 1989], has failed to comply with any of the requirements imposed on him by his notice of supervision, the sheriff may issue a warrant for the arrest of that person or may, if he thinks fit, instead of issuing such a warrant in the first instance, issue a citation requiring the person to appear before him at such time as may be specified in the citation.
- (2) If it is proved to the satisfaction of the sheriff before whom a person appears or is brought in pursuance of the foregoing subsection that the person has failed to comply with any of the requirements of the notice of supervision, the sheriff shall, unless having regard to all the circumstances of the case, he considers it unnecessary or inexpedient to do so, order that he be sent back to prison for such term as may be specified in that order, not exceeding whichever is the shorter of the following, that is to say—
  - (a) a period of three months;
  - (b) a period equal to so much of the period of 12 months referred to in [F249]section 30(4) of the said Act of 1989] as was unexpired on the date on which proceedings were commenced.
- (3) Subject to the following provisions of this section, this Part of this Act shall apply in relation to proceedings for an order as aforesaid as it applies in relation to proceedings in respect of a summary offence, and references in this Part of this Act to an offence, trial, conviction or sentence shall be construed accordingly.
- (4) Proceedings for an order under subsection (2) of this section may be brought before a sheriff having jurisdiction in the area in which the supervising officer carries out his duties.
- (5) A warrant issued for the purposes of proceedings for an order under subsection (2) above may, if the person laying the information so requests, bear an endorsement requiring any constable charged with its execution to communicate with the Secretary of State before arresting the person under supervision if the constable finds that that person is earning an honest livelihood or that there are other circumstances which ought to be brought to the notice of the Secretary of State.
- (6) Where a person while under supervision under [F250]section 30 of the said Act of 1989] is convicted of an offence for which the court has power to pass sentence of imprisonment, the court may, instead of dealing with him in any other manner, make such an order as could be made by a sheriff under subsection (2) of this section in proceedings for such an order.
- (7) The Secretary of State may at any time release from prison a person who has been sent back to prison under subsection (2) or (6) of this section; and the provisions of this

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section and of [F251section 30 of the said Act of 1989] shall apply to a person released by virtue of this subsection, subject to the following modifications:

- (a) that the period of 12 months referred to in [F251subsection (4) of the said section 30] shall be calculated from the date of his original release; and
- (b) in relation to any further order for sending him back to prison under this section, the period referred to in subsection (2)(a) of this section shall be reduced by any time during which he has been detained by virtue of the previous order.

(8) In any proceedings, a certificate purporting to be signed by or on behalf of the Secretary of State and certifying—

- (a) that a notice of supervision was given to any person in the terms specified in the certificate and on the date so specified; and
- (b) either that no notice has been given to him under [F252subsection (5) of section 30 of the said Act of 1989] or that a notice has been so given in the terms specified in the certificate,

shall be sufficient evidence of the matters so certified; and the fact that a notice of supervision was given to any person shall be sufficient evidence that he was a person to whom [F252the said section 30] applies.

(9) For the purposes of Part III of the M84Criminal Justice Act 1961, a person who has been sent back to prison under subsection (2) or (6) of this section, and has not been released again, shall be deemed to be serving part of his original sentence, whether or not the term of that sentence has in fact expired.

#### Textual Amendments

- F248** Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 65(3)
- F249** S. 384(5B)(5C) inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 65(1)(2)(b)
- F250** S. 384(1A)(a)(b) substituted (1.10.1992) for certain words by Criminal Justice Act 1991 (c. 53), s. 16, Sch. 3, Pt. II, para. 7(2) (with s. 28); S.I. 1992/333, art. 2(2), Sch. 2.
- F251** Words in s. 384(1) substituted (31.3.1996 subject to transitional provisions and savings in commencing S.I.) by 1995 c. 20, s. 38(3)(a)(i); S.I. 1996/517, arts. 3(2), 4-6, Sch. 2
- F252** Words in s. 384(1) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, ss. 38(3)(a)(ii), 117(2), Sch. 7 Pt. I; S.I. 1996/517, arts. 3(2), 4-6, Sch. 2

#### Marginal Citations

- M84** 1961 c. 39(39:1).

## 424 Detention in precincts of court.

Where a court of summary jurisdiction has power to impose imprisonment [F253or detention] on an offender it may, in lieu of so doing, order that the offender be detained within the precincts of the court or at any police station, till such hour, not later than eight in the evening on the day on which he is convicted, as the court may direct:

Provided that before making an order under this section a court shall take into consideration the distance between the proposed place of detention and the offender's residence (if known to, or ascertainable by, the court), and shall not make any such

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order under this section as would deprive the offender of a reasonable opportunity of returning to his residence on the day on which the order is made.

#### Textual Amendments

**F253** Words inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 84(2), [Sch. 7 para. 68](#) and [S.I. 1983/1580, art. 3](#)

#### 425 No imprisonment for less than five days.

- (1) No person shall be sentenced to imprisonment by a court of summary jurisdiction for a period of less than five days.
- (2) Where a court of summary jurisdiction has power to impose imprisonment on an offender, it may, if any suitable place provided and certified as hereinafter mentioned is available for the purpose, sentence the offender to be detained therein, for such period not exceeding four days as the court thinks fit, and an extract of the finding and sentence shall be delivered with the offender to the person in charge of the place where the offender is to be detained and shall be a sufficient authority for his detention in that place in accordance with the sentence.
- (3) The expenses of the maintenance of offenders detained under this section shall be defrayed in like manner as the expenses of the maintenance of prisoners under the <sup>M85</sup>Prisons (Scotland) Act 1952.
- (4) The Secretary of State may, on the application of any police authority, certify any police cells or other similar places provided by the authority to be suitable places for the detention of persons sentenced to detention under this section, and may by statutory instrument make regulations for the inspection of places so provided, the treatment of persons detained therein and generally for carrying this section into effect.
- (5) No place certified under this section shall be used for the detention of females unless provision is made for their supervision by female officers.
- (6) In this section the expression “police authority” means a regional or islands council, except that where there is an amalgamation scheme under the <sup>M86</sup>Police (Scotland) Act 1967 in force it means a joint police committee.
- (7) Until 16th May 1975 the last foregoing subsection shall have effect as if, for the words “regional or islands council”, there were substituted the words “council of a county or of a burgh which maintains a separate police force”.

#### Marginal Citations

**M85** [1952 c. 61\(39:1\)](#).

**M86** [1967 c. 77\(95\)](#).

#### [<sup>F254</sup>426 Legal custody.

Any person required or authorised by or under this Act or [<sup>F255</sup>any other enactment or any subordinate instrument] to be taken to any place, or to be detained or kept in custody shall, while being so taken or detained or kept, be deemed to be in legal custody.]



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#### Textual Amendments

- F254** S. 426 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 69**  
**F255** Words substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 12**

*Miscellaneous provisions as to conviction, sentence, etc.*

#### **427 Conviction of part only of charge.**

A conviction of a part or parts only of the charge or charges labelled in a complaint shall imply dismissal of the rest of the complaint.

#### **428 Art and part guilt of statutory offence.**

[<sup>F256</sup>(1)] A person may be convicted of, and punished for, contravention of any [<sup>F257</sup>enactment], notwithstanding that he was guilty of such contravention as art and part only.

[<sup>F258</sup>(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.]

#### Textual Amendments

- F256** S. 428 renumbered s. 428(1) by virtue of Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 64(1)(2)  
**F257** Word substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 64(1)(2)  
**F258** S. 428(2) inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 64(1)(2)

PROSPECTIVE

#### **429 “Conviction” and “sentence” not to be used in relation to a child.**

The words “conviction” and “sentence” shall not be used in relation to children dealt with summarily and any reference in any enactment, whether passed before or after the commencement of this Act, to a person convicted, a conviction or a sentence shall in the case of a child be construed as including a reference to a person found guilty of an offence, a finding of guilt or an order made upon such a finding as the case may be.

#### **430 Forms of finding and sentence.**

- (1) The finding and sentence and any order of a court of summary jurisdiction, as regards both offences at common law and offences under any statute or order, shall be entered in the record of the proceedings in the form, as nearly as may be, of the appropriate form contained in Part V of Schedule 2 to the <sup>M87</sup>Summary Jurisdiction (Scotland)

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Act 1954 or in an Act of Adjournal under this Act, which shall be sufficient warrant for all execution thereon and for the clerk of court to issue extracts containing such executive clauses as may be necessary for implement thereof; and, when imprisonment forms part of any sentence or other judgment, warrant for the apprehension and interim detention of the accused pending his being committed to prison shall, where necessary, be implied.

- (2) Where a fine imposed by a court of summary jurisdiction is paid at the bar it shall not be necessary for the court to refer to the period of imprisonment applicable to the non-payment thereof.
- (3) Where several charges at common law or under any statute or order are embraced in one complaint, a cumulo fine may be imposed in respect of all or any of such charges of which the accused is convicted.
- (4) A sentence following on a conviction by a court of summary jurisdiction may be framed so as to take effect on the expiry of any previous sentence which at the date of such conviction the accused is undergoing.

#### Marginal Citations

M87 1954 c. 48(39:1).

#### 430A Sentence following guilty plea.

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

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

#### 431 Consideration of time spent in custody.

A court, in passing a sentence of imprisonment or detention . . . <sup>F260</sup> on a person for any offence, shall, in determining the period of imprisonment or detention, have regard to any period of time spent in custody by that person on remand awaiting trial or sentence.

#### Textual Amendments

**F260** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 70](#) and [S.I. 1983/1580, art. 3](#)

#### 432 Deferred sentence.

[<sup>F261</sup>(1)] It shall be competent for a court to defer sentence after conviction for a period and on such conditions as the court may determine [<sup>F262</sup>; and the fact that the accused has been convicted shall not prevent the court from making, in due course, a probation order under section 384 of this Act.]

[<sup>F263</sup>(2) If it appears to the court by which sentence on a person has been deferred under subsection (1) above that that person has been convicted, during the period of

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deferment, by a court in any part of Great Britain of an offence committed during that period and has been dealt with for that offence, the first mentioned court may issue a warrant for the arrest of that person, or may, instead of issuing such a warrant in the first instance, issue a citation requiring him to appear before it at such time as may be specified in the citation; and on his appearance or on his being brought before the court it may deal with him in any manner in which it would be competent for it to deal with him on the expiry of the period of deferment.

- (3) Where a court which has deferred sentence under subsection (1) above on a person convicts that person of another offence during the period of deferment, it may deal with him for the original offence in any manner in which it would be competent for it to deal with him on the expiry of the period of deferment, as well as for the offence committed during the said period.]

#### Textual Amendments

**F261** S. 162(4)(5) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 29(1); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

**F262** Words added by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 53(2)

**F263** S. 432(2)(3) inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 54

#### 433 Sentence in open court.

Every sentence imposed by a court of summary jurisdiction shall unless otherwise provided be pronounced in open court in the presence of the accused, but need not be written out or signed in his presence.

#### 434 Further provision as to sentence.

- (1) It shall be competent at any time before imprisonment has followed on a sentence for the court to alter or modify it; but no higher sentence than that originally pronounced shall be competent.
- (2) The signature of the judge or clerk of court to any sentence shall be sufficient also to authenticate the findings on which such sentence proceeds.
- (3) The power conferred by subsection (1) of this section to alter or modify a sentence shall be exercisable without requiring the attendance of the accused . . . <sup>F264</sup>

#### Textual Amendments

**F264** Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 63:1), Sch. 6 para. 1, **Sch. 8**

#### 435 Expenses.

The following provisions shall have effect with regard to the award of expenses in a summary prosecution:—

- (a) expenses may be awarded to or against a private prosecutor but shall not be awarded against any person prosecuting in the public interest unless the statute or order under which the prosecution is brought expressly or impliedly authorises such an award;

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- (b) the finding regarding expenses shall be stated in the sentence or judgment disposing of the case;
- (c) expenses awarded to the prosecutor shall be restricted to the fees set forth in Schedule 3 to the <sup>M88</sup>Summary Jurisdiction (Scotland) Act 1954;
- (d) the court may award expenses against the accused without imposing any fine or may direct the expenses incurred by the prosecutor, whether public or private, to be met wholly or partly out of any fine imposed;
- (e) expenses awarded against the accused, where the fine or fines imposed do not exceed [<sup>F265</sup>£400], shall not exceed [<sup>F265</sup>£100]:

Provided that if it appears to the court that the reasonable expenses of the prosecutor's witnesses together with the other expenses exceed the sum of [<sup>F265</sup>£100], the court may direct the expenses of those witnesses to be paid wholly or partly out of the fine;

- (f) where a child is himself ordered by a sheriff sitting summarily to pay expenses in addition to a fine, the amount of the expenses so ordered to be paid shall in no case exceed the amount of the fine;
- (g) any expenses awarded shall be recoverable by civil diligence in accordance with section 411 of this Act.

#### Textual Amendments

**F265** Words substituted by [S.I. 1984/526, art. 6](#)

#### Marginal Citations

**M88** [1954 c. 48\(39:1\)](#).

### [<sup>F266</sup>436 Forfeiture of property.

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

#### Textual Amendments

**F266** [S. 436](#) substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), Sch. 7 para. 71](#)

#### Modifications etc. (not altering text)

**C96** [S. 436](#) excluded by [Telecommunications Act 1984 \(c. 12, SIF 96\), s. 75, Sch. 3 para. 3\(b\)](#)

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**F267 436A Disqualification in Scotland where vehicle used to commit offence.**

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

**437 Warrant of search for forfeited articles.**

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

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

issue a warrant of search which may be executed according to law; and for the purposes of this section, any reference to a justice of the peace includes a reference to the sheriff and to a magistrate.

**438 Register of children found guilty of offences.**

In addition to any other register required by law, a separate register of children found guilty of offences and of children discharged on bond or put on probation shall be kept for every summary court by the chief constable or other person charged with the duty of keeping registers of convictions. The register shall apply to children of such age, and shall include such particulars, as may be directed by the Secretary of State, and it shall be the duty of the keeper of the register, within seven days after any such child has been dealt with by the court, to transmit a copy of the entry relating to the child to the education authority for the area in which the child resides.

**[F268 439 Correction of entries.**

- (1) Subject to the provisions of this section, it shall be competent to correct an entry in—
  - (a) the record of proceedings in a summary prosecution; or
  - (b) the extract of a sentence passed or an order of court made in such proceedings,in so far as that entry constitutes an error of recording or is incomplete.
- (2) Such entry may be corrected—

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

#### Textual Amendments

**F268** S. 439 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 20

#### **439A Amendment of records of conviction and sentence in summary proceedings.**

- (1) Without prejudice to section 439 of this Act, where, on an application in accordance with subsection (2) below, the High Court is satisfied that a record of conviction or sentence in summary proceedings inaccurately records the identity of any person, it may authorise the clerk of the court which convicted or, as the case may be, sentenced the person to correct the record.
- (2) An application under subsection (1) above shall be made after the determination of the summary prosecution and may be made by any party to the summary proceedings or any other person having an interest in the correction of the alleged inaccuracy.
- (3) The High Court shall order intimation of an application under subsection (1) above to such persons as it considers appropriate and shall not determine the application without affording to the parties to the summary proceedings and to any other person having an interest in the correction of the alleged inaccuracy an opportunity to be heard.
- (4) The power of the High Court under this section may be exercised by a single judge of the High Court in the same manner as it may be exercised by the High Court, and subject to the same provisions.

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#### 440 Extract sufficient warrant for imprisonment.

Where imprisonment is authorised by the sentence of a court of summary jurisdiction, an extract of the finding and sentence in the form, as nearly as may be, of the appropriate form contained in Part V of Schedule 2 to the <sup>M89</sup>Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act shall be a sufficient warrant for the apprehension and commitment of the accused, and no such extract shall be void or liable to be set aside on account of any error or defect in point of form.

#### Marginal Citations

M89 1954 c. 48(39:1).

#### 441 Provision for court comprising more than one judge.

In any proceedings in a court of summary jurisdiction consisting of more than one judge, the signature of one judge shall be sufficient in all warrants or other proceedings prior or subsequent to conviction, although the presence and signature of two or more judges may be necessary to conviction of the offence in respect of which such warrants are granted or proceedings take place, and it shall not be necessary that the judge so signing shall be one of the judges trying or dealing with the case otherwise.

*Review*

#### [<sup>F270</sup>442 Right of appeal.

- (1) Without prejudice to any right of appeal under section 453A of this Act—
  - (a) any person convicted in summary proceedings may appeal under this section to the High Court—
    - (i) against such conviction;
    - (ii) against the sentence passed on such conviction; or
    - (iii) against both such conviction and such sentence;
  - (b) the prosecutor in such proceedings may so appeal on a point of law—
    - (i) against an acquittal in such proceedings; or
    - (ii) against a sentence passed in such proceedings.
- (2) By an appeal under subsection (1)(a) of this section or, as the case may be, against acquittal under subsection (1)(b) of this section, an appellant may bring under review of the High Court any alleged miscarriage of justice in the proceedings, including, in the case of an appeal under the said subsection (1)(a), any alleged miscarriage of justice on the basis of the existence and significance of additional evidence which was not heard at the trial and which was not available and could not reasonably have been made available at the trial.]

#### Textual Amendments

F270 S. 442, 442A, 442B substituted for s. 442 by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 1, Sch. 6 para. 7

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#### **442ZA Leave to appeal against conviction etc.**

- (1) The decision whether to grant leave to appeal for the purposes of section 442(1)(a)(i) or (iii) of this Act shall be made by a judge of the High Court who shall—
  - (a) if he considers that the documents mentioned in subsection (2) below disclose arguable grounds of appeal, grant leave to appeal and make such comments in writing as he considers appropriate; and
  - (b) in any other case—
    - (i) refuse leave to appeal and give reasons in writing for the refusal; and
    - (ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.
- (2) The documents referred to in subsection (1) above are—
  - (a) the stated case lodged under subsection (4) of section 448 of this Act; and
  - (b) the documents transmitted to the Clerk of Justiciary under subsection (3)(b) of that section.
- (3) A warrant granted under subsection (1)(b)(ii) above shall not take effect until the expiry of the period of 14 days mentioned in subsection (4) below without an application to the High Court for leave to appeal having been lodged by the appellant under that subsection.
- (4) Where leave to appeal is refused under subsection (1) above the appellant may, within 14 days of intimation under subsection (10) below, apply to the High Court for leave to appeal.
- (5) In deciding an application under subsection (4) above the High Court shall—
  - (a) if, after considering the documents mentioned in subsection (2) above and the reasons for the refusal, the court is of the opinion that there are arguable grounds of appeal, grant leave to appeal and make such comments in writing as the court considers appropriate; and
  - (b) in any other case—
    - (i) refuse leave to appeal and give reasons in writing for the refusal; and
    - (ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.
- (6) Consideration whether to grant leave to appeal under subsection (1) or (5) above shall take place in chambers without the parties being present.
- (7) Comments in writing made under subsection (1)(a) or (5)(a) above may, without prejudice to the generality of that provision, specify the arguable grounds of appeal (whether or not they are contained in the stated case) on the basis of which leave to appeal is granted.
- (8) Where the arguable grounds of appeal are specified by virtue of subsection (7) above it shall not, except by leave of the High Court on cause shown, be competent for the appellant to found any aspect of his appeal on any ground of appeal contained in the stated case but not so specified.
- (9) Any application by the appellant for the leave of the High Court under subsection (8) above—



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- (a) shall be made not less than seven days before the date fixed for the hearing of the appeal; and
  - (b) shall, not less than seven days before that date, be intimated by the appellant to the Crown Agent.
- (10) The Clerk of Justiciary shall forthwith intimate—
- (a) a decision under subsection (1) or (5) above; and
  - (b) in the case of a refusal of leave to appeal, the reasons for the decision, to the appellant or his solicitor and to the Crown Agent.

#### **442A Method of appeal against conviction or conviction and sentence.**

- (1) Where a person desires to appeal under section 442(1)(a)(i) or (iii) or (b) of this Act, he shall pursue such appeal in accordance with the provisions of sections 444 to 453, 453D and 453E of this Act.
- (2) A person who has appealed against both conviction and sentence, may abandon the appeal in so far as it is against conviction and may proceed with it against sentence alone, subject to such procedure as may be prescribed by Act of Adjournal under this Act.

#### **442B Method of appeal against sentence alone.**

Where a person desires to appeal against sentence alone, under section 442(1)(a)(ii) of this Act, he shall pursue such appeal in accordance with the provisions of sections 453B to 453E of this Act:

Provided that nothing in this section shall prevent a convicted person from proceeding by way of a bill of suspension in respect of any alleged fundamental irregularity relating to the imposition of the sentence.

#### **443 Appeals against hospital orders, etc.**

Where a hospital order [<sup>F272</sup>interim hospital order (but not a renewal thereof),] guardianship order or an order restricting discharge has been made by a court in respect of a person charged or brought before it, he may, without prejudice to any other form of appeal under any rule of law [<sup>F273</sup>(or, where an interim hospital order has been made, to any right of appeal against any other order or sentence which may be imposed)], appeal against that order in the same manner as against [<sup>F274</sup>sentence].

#### **Textual Amendments**

**F272** Words inserted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), s. 34\(d\)\(i\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)

**F273** Words inserted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), s. 34\(d\)\(ii\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)

**F274** Word substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), Sch. 3 para. 2, Sch. 6 para. 7](#)

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[<sup>F275</sup> **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.]

**Textual Amendments**

**F275** Words in s. 384(5A) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 38(3)(b)(i); S.I.1996/517, arts. 3(2), 4-6, Sch. 2

**444 Manner and time of appeal.**

- [<sup>F276</sup> (1) An appeal under section 442(1)(a)(i) or (iii) or (b) of this Act shall be by application for a stated case, which application shall—

- (a) be made within one week of the final determination of the proceedings;
- (b) contain a full statement of all the matters which the appellant desires to bring under review and where the appeal is also against the sentence, a statement of that fact; and
- (c) be signed by the appellant or his solicitor and lodged with the clerk of court; and a copy of the application shall within the period mentioned in paragraph (a) above be sent by the appellant to the respondent or the respondent's solicitor.

- (1A) The clerk of the court shall enter in the record of the proceedings the date when an application under subsection (1) above was lodged.

- (1B) The appellant may, at any time within the period of three weeks mentioned in subsection (1) of section 448 of this Act, or within any further period afforded him by virtue of subsection (6) of that section, amend any matter stated in his application or add a new matter; and he shall intimate any such amendment, or addition, to the respondent or the respondent's solicitor.]

- (2) Where such an application has been made by the person convicted, and the judge by whom he was convicted dies before signing the case or is precluded by illness or other cause from doing so, it shall be competent for the convicted person to present a bill of suspension to the High Court and to bring under the review of that court any matter which might have been brought under review by stated case.

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- (3) Without prejudice to any other power of relief which the High Court may have, where it appears to that court on application made in accordance with the following provisions of this section, that the applicant has failed to comply with any of the requirements of subsection (1) of this section, the High Court may direct that such further period of time as it may think proper be afforded to the applicant to comply with any requirement of the aforesaid provisions.
- (4) Any application for a direction under the last foregoing subsection shall be made in writing to the Clerk of Justiciary and shall state the grounds for the application, and notification of the application shall be made by the appellant or his solicitor to the clerk of the court from which the appeal is to be taken, and the clerk shall thereupon transmit the complaint, documentary productions and any other proceedings in the cause to the Clerk of Justiciary.
- (5) The High Court shall dispose of any application under [F277 subsection (3) of] this section in like manner as an application to review the decision of an inferior court on a grant of [F278 bail], but shall have power—
  - (a) to dispense with a hearing; and
  - (b) to make such enquiry in relation to the application as the court may think fit; and when the High Court has disposed of the application the Clerk of Justiciary shall inform the clerk of the inferior court of the result.
- (6) ..... F279

**Textual Amendments**

**F276** Words in s. 181 substituted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(2)**

**F277** Words inserted by **Criminal Justice (Scotland) Act 1980** (c. 62, SIF 39:1), Sch. 3 para. 3(b), **Sch. 6 para. 7**

**F278** Words substituted by **Bail etc. (Scotland) Act 1980** (c. 4, SIF 39:1), **Sch.1 para. 10**

**F279** Word in s. 20A(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 10(2)(a); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

445 ..... F280

**Textual Amendments**

**F280** S. 445 repealed by **Criminal Justice (Scotland) Act 1980** (c. 62, SIF 39:1), Schs. 6 para. 7, **Sch. 8**

**446 Procedure where appellant in custody.**

- [F281(1) If an appellant under section 444 of this Act is in custody, the court may—
  - (a) grant bail;
  - (b) grant a sist of execution;
  - (c) make any other interim order.]
- (2) An application for [F282 bail] shall be disposed of by the court within 24 hours after such application has been made. The appellant, if dissatisfied with the [F283 conditions imposed], or on refusal of [F282 bail], may, within 24 hours after the judgment of the

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court, appeal thereagainst by a note of appeal written on the complaint and signed by himself or his solicitor, and the complaint and proceedings shall thereupon be transmitted to the Clerk of Justiciary, and the High Court or any judge thereof, either in court or in chambers, shall, after hearing parties, have power to review the decision of the inferior court and to grant [<sup>F282</sup>bail] on such conditions as such court or judge may think fit, or to refuse [<sup>F282</sup>bail].

- (3) No clerks' fees, court fees or other fees or expenses shall be exigible from or awarded against an appellant in custody in respect of an appeal to the High Court against the [<sup>F283</sup>conditions imposed] or on account of refusal of [<sup>F282</sup>bail] by a court of summary jurisdiction.
- (4) If an appellant who has been granted [<sup>F282</sup>bail] does not thereafter proceed with his appeal, the inferior court shall have power to grant warrant to apprehend and imprison him for such period of his sentence as at the date of his [<sup>F282</sup>bail] remained unexpired, such period to run from the date of his imprisonment under such warrant.
- (5) Where an appellant who has been granted [<sup>F282</sup>bail] does not thereafter proceed with his appeal, the court from which the appeal was taken shall have power, where at the time of the abandonment of the appeal the person is serving a term or terms of imprisonment imposed subsequently to the conviction appealed against, to order that the sentence or, as the case may be, the unexpired portion of that sentence relating to that conviction should run from such date as the court may think fit, not being a date later than the date on which the term or terms of imprisonment subsequently imposed expired.

#### Textual Amendments

**F281** S. 446(1) substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 3 para. 5, **Sch. 6 para. 7**

**F282** Word substituted by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), **Sch. 1 para. 11(a)**

**F283** Words substituted by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), **Sch. 1 para. 11(b)**

#### Modifications etc. (not altering text)

**C97** S. 446(2) applied by [Extradition Act 1989 \(c. 33, SIF 48\)](#), s. 10(13)

### 447 Draft stated case to be prepared.

- [<sup>F284</sup>(1) Within three weeks of the final determination of proceedings in respect of which an application for a stated case is made under section 444 of this Act—
- (a) where the appeal is taken from the district court and the trial was presided over by a justice of the peace or justices of the peace, [<sup>F285</sup>the clerk of court]; or
  - (b) in any other case the judge who presided at the trial,
- shall prepare a draft stated case, and the clerk of the court concerned shall forthwith issue the draft to the appellant or his solicitor and a duplicate thereof to the respondent or his solicitor.]
- (2) A stated case shall be in the form, as nearly as may be, . . . <sup>F286</sup> of the appropriate form contained in an Act of Adjournal under this Act, and shall set forth the particulars of any matters competent for review which the appellant desires to bring under the review of the High Court, and of the facts, if any, proved in the case, and any point of law decided, and the grounds of the decision.

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#### Textual Amendments

- F284** S. 447(1) substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 3 para. 6, **Sch. 6 para. 7**
- F285** Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 39:1\)](#), s. 23(2), **Sch. 2 para. 20**
- F286** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 63:1\)](#), Sch. 6 para. 1, **Sch. 8**

#### 448 Adjustment and signature of case.

[<sup>F287</sup>(1) Subject to subsection (6) below, within three weeks of the issue of the draft stated case under section 447 of this Act, each party shall cause to be transmitted to the court and to the other parties or their solicitors a note of any adjustments he proposes be made to the draft case or shall intimate that he has no such proposal:

Provided that adjustments proposed shall relate to evidence heard (or purported to have been heard) at the trial and not to such additional evidence as is mentioned in section 442(2) of this Act.

- (2) Subject to subsection (6) below, if the period mentioned in subsection (1) above has expired and the appellant has not lodged adjustments and has failed to intimate that he has no adjustments to propose, he shall be deemed to have abandoned his appeal; and subsection (4) of section 446 of this Act shall apply accordingly.
- (2A) If adjustments are proposed under subsection (1) above or if the judge desires to make any alterations to the draft case there shall, within one week of the expiry of the period mentioned in that subsection or as the case may be of any further period afforded under subsection (6) below, be a hearing (unless the appellant has, or has been deemed to have, abandoned his appeal) for the purpose of considering such adjustments or alterations.
- (2B) Where a party neither attends nor secures that he is represented at a hearing under subsection (2A) above, the hearing shall nevertheless proceed.
- (2C) Where at a hearing under subsection (2A) above—
- (a) any adjustment proposed under subsection (1) above by a party (and not withdrawn) is rejected by the judge; or
  - (b) any alteration . . . <sup>F288</sup> proposed by the judge is not accepted by all the parties, that fact shall be recorded in the minute of the proceedings of the hearing.
- (2D) Within two weeks of the date of the hearing under subsection (2A) above or, where there is no hearing, within two weeks of the expiry of the period mentioned in subsection (1) above, the judge shall (unless the appellant has been deemed to have abandoned the appeal) state and sign the case and shall append to the case—
- (a) any adjustment, proposed under subsection (1) above, which is rejected by him, a note of any evidence rejected by him which is alleged to support that adjustment and the reasons for his rejection of that adjustment and evidence; and
  - (b) a note of the evidence upon which he bases any finding of fact challenged, on the basis that it is unsupported by the evidence, by a party at the hearing under subsection (2A) above.]

[<sup>F289</sup>(3) As soon as the case is signed under subsection (2D) above the clerk of court—

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- (a) shall send the case to the appellant or his solicitor and a duplicate thereof to the respondent or his solicitor; and
  - (b) shall transmit the complaint, productions and any other proceedings in the cause to the Clerk of Justiciary.
- (4) Subject to subsection (6) below, within one week of receiving the case the appellant or his solicitor, as the case may be, shall cause it to be lodged with the Clerk of Justiciary.
- (5) Subject to subsection (6) below, if the appellant or his solicitor fails to comply with subsection (4) above the appellant shall be deemed to have abandoned the appeal; and subsection (4) of section 446 of this Act shall apply accordingly.]
- (6) Without prejudice to any other power of relief which the High Court may have, where it appears to that court on application made in accordance with the following provisions of this section, that the applicant has failed to comply with any of the requirements of subsection [F290(1) or] (4) of this section, the High Court may direct that such further period of time as it may think proper be afforded to the applicant to comply with any requirement of the aforesaid provisions.
- (7) Any application for a direction under the last foregoing subsection shall be made in writing to the Clerk of Justiciary and shall state the grounds for the application.
- (8) The High Court shall dispose of any application under [F291subsection (6) of] this section in like manner as an application to review the decision of an inferior court on a grant of [F292bail], but shall have power—
- (a) to dispense with a hearing; and
  - (b) to make such enquiry in relation to the application as the court may think fit; and when the High Court has disposed of the application the Clerk of Justiciary shall inform the clerk of the inferior court of the result.
- (9) ..... F293

#### Textual Amendments

- F287** S. 448(1)–(2D) substituted for s. 448(1)(2) by Criminal Justice (Scotland) Act 1980 (c. 62), Sch. 3 para. 7(a), **Sch. 6 para. 7**
- F288** Words repealed by Law Reform (Miscellaneous Provisions (Scotland) Act 1985 (c. 73, SIF 36:1), Sch. 4
- F289** S. 448(3)–(5) substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 7(b), **Sch. 6 para. 7**
- F290** Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 7(c), **Sch. 6 para. 7**
- F291** Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 7(d), **Sch. 6 para. 7**
- F292** Word substituted by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 1 para. 12**
- F293** S. 448(9) repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 8**

#### 449 Abandonment of appeal.

- (1) An appellant [F294in an appeal such as is mentioned in section 444(1)] of this Act may at any time prior to lodging the case with the Clerk of Justiciary abandon his appeal by minute signed by himself or his solicitor, written on the complaint or lodged with the clerk of the inferior court, and intimated to the respondent [F295or the respondent's

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solicitor], but such abandonment shall be without prejudice to any other competent mode of appeal, review, advocacy or suspension.

- (2) [<sup>F296</sup>Subject to section 453A of this Act] On the case being lodged with the Clerk of Justiciary, the appellant shall be held to have abandoned any other mode of appeal which might otherwise have been open to him.

#### Textual Amendments

**F294** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 8(a)(i), **Sch. 6 para. 7**

**F295** Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 8(a)(ii), **Sch. 6 para. 7**

**F296** Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 8(b), **Sch. 6 para. 7**

## 450 Record of procedure in appeal.

On an appeal [<sup>F297</sup>such as is mentioned in section 444(1) of this Act being taken] the clerk of court shall record on the complaint the different steps of procedure in the appeal, and such record shall be evidence of the dates on which the various steps of procedure took place. The forms of procedure in appeals shall be as nearly as may be in accordance with the forms contained in . . . <sup>F298</sup> an Act of Adjournal under this Act.

#### Textual Amendments

**F297** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 9, **Sch. 6 para. 7**

**F298** Words repealed by S.I. 1981/386, **rule 4(3)**

## [<sup>F299</sup>451 Computation of time.

- (1) If any period of time specified in any provision of this Part of this Act relating to appeals expires on a Saturday, Sunday or court holiday prescribed for the relevant court, the period shall be extended to expire on the next day which is not a Saturday, Sunday or such court holiday.
- (2) Where a judge against whose judgment an appeal is taken is temporarily absent from duty for any cause, the sheriff principal of the sheriffdom in which the court at which the judgment was pronounced is situated may extend any period specified in sections 447(1) and 448(2A) and (2D) of this Act for such period as he considers reasonable.
- (3) For the purposes of sections 444(1)(a) and 447(1) of this Act, summary proceedings shall be deemed to be finally determined on the day on which sentence is passed in open court; except that, where in relation to an appeal under section 442(1)(a)(i) or (b) (i) of this Act sentence is deferred under section 432 of this Act, they shall be deemed finally determined on the day on which sentence is first so deferred in open court.]

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### Textual Amendments

**F299** S. 451 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 3 para. 10, [Sch. 6 para. 7](#)

### 451A Quorum of High Court in relation to appeals.

- (1) For the purpose of hearing and determining any appeal under this Part of this Act, or any proceeding connected therewith, three of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and the determination of any question under this Part of this Act by the court shall be according to the votes of the majority of the members of the court sitting, including the presiding judge, and each judge so sitting shall be entitled to pronounce a separate opinion.
- (2) For the purpose of hearing and determining appeals under section 442(1)(a)(ii) or (ia) of this Act, or any proceeding connected therewith, two of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and each judge shall be entitled to pronounce a separate opinion; but where the two Lords Commissioners of Justiciary are unable to reach agreement on the disposal of the appeal, or where they consider it appropriate, the appeal shall be heard and determined in accordance with subsection (1) above.

### [<sup>F301</sup>452 Hearing of appeal.

- (1) A stated case under this Part of this Act shall be heard by the High Court on such date as it may fix.
- (2) For the avoidance of doubt, where an appellant, in his application under section 444(1) of this Act (or in a duly made amendment or addition to that application), refers to an alleged miscarriage of justice, but in stating a case under section 448(2D) of this Act the inferior court is unable to take the allegation into account, the High Court may nevertheless have regard to the allegation at a hearing under subsection (1) above.
- (3) Except by leave of the High Court on cause shown, it shall not be competent for an appellant to found any aspect of his appeal on a matter not contained in his application under section 444(1) of this Act (or in a duly made amendment or addition to that application).
- (4) Without prejudice to any existing power of the High Court, that court may in hearing a stated case—
  - (a) order the production of any document or other thing connected with the proceedings;
  - (b) hear any additional evidence relevant to any alleged miscarriage of justice or order such evidence to be heard by a judge of the High Court or by such other person as it may appoint for that purpose;
  - (c) take account of any circumstances relevant to the case which were not before the trial judge;
  - (d) remit to any fit person to enquire and report in regard to any matter or circumstance affecting the appeal;
  - (e) appoint a person with expert knowledge to act as assessor to the High Court in any case where it appears to the court that such expert knowledge is required for the proper determination of the case;



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- (f) take account of any matter proposed in any adjustment rejected by the trial judge and of the reasons for such rejection;
  - (g) take account of any evidence contained in a note of evidence such as is mentioned in section 448(2D) of this Act.
- (5) The High Court may at the hearing remit the stated case back to the inferior court to be amended and returned.]

#### Textual Amendments

**F301** Ss. 452, 452A, 452B substituted for s. 452 by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 3 para. 11](#), [Sch. 6 para. 7](#).

#### Modifications etc. (not altering text)

**C98** S. 452(4)(a)–(e) extended by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), [s. 81\(8\)](#)

**C99** S. 452(4)(a)–(e) extended by [Consumer Protection Act 1987 \(c. 43, SIF 109:1\)](#), [s. 17\(8\)](#)

**C100** S. 452(4)(a)–(e) applied (28.10.1992) by [S.I. 1992/2372](#), [reg. 95\(8\)](#).

S. 452(4)(a)–(e) applied (31.10.1994) by [1994 c. 26](#), [s. 98\(9\)](#); [S.I. 1994/2550](#), [art. 2](#)

### 452A Disposal of stated case appeal.

- (1) The High Court may, subject to section 453D(1) of this Act, dispose of a stated case by—
- (a) remitting the cause to the inferior court with their opinion and any direction thereon;
  - (b) affirming the verdict of the inferior court;
  - (c) setting aside the verdict of the inferior court and either quashing the conviction or substituting therefor an amended verdict of guilty:
- Provided that an amended verdict of guilty must be one which could have been returned on the complaint before the inferior court; or
- (d) setting aside the verdict of the inferior court and granting authority to bring a new prosecution in accordance with section 452B of this Act.
- (2) In an appeal against both conviction and sentence the High Court shall, subject to section 453D(1) of this Act, dispose of the appeal against sentence by exercise of the power mentioned in section 453C(1) of this Act.
- (3) In setting aside, under subsection (1) above, a verdict the High Court may quash any sentence imposed on the appellant as respects the complaint, and—
- (a) in a case where it substitutes an amended verdict of guilty, whether or not the sentence related to the verdict set aside; or
  - (b) in any other case, where the sentence did not so relate,
- may pass another (but not more severe) sentence in substitution for the sentence so quashed.
- (4) Where an appeal against acquittal is sustained, the High Court may—
- (a) convict and sentence the respondent;
  - (b) remit the case to the inferior court with instructions to convict and sentence the respondent, who shall be bound to attend any diet fixed by the inferior court for such purpose; or

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(c) remit the case to the inferior court with their opinion thereon:

Provided that the High Court shall not in any case increase the sentence beyond the maximum sentence which could have been passed by the inferior court.

- (5) The High Court shall have power in an appeal under this Part of this Act to award such expenses both in the High Court and in the inferior court as it may think fit.
- (6) Where, following an appeal (other than an appeal under section 442(1)(a)(ii) or 442(1)(b) of this Act), the appellant remains liable to imprisonment or detention under the sentence of the inferior court, or is so liable under a sentence passed in the appeal proceedings the High Court shall have power where at the time of disposal of the appeal the appellant—
- (a) was at liberty on bail, to grant warrant to apprehend and imprison (or detain) the appellant for a term, to run from the date of such apprehension, not longer than that part of the term or terms of imprisonment (or detention) specified in the sentence brought under review which remained unexpired at the date of liberation;
  - (b) is serving a term or terms of imprisonment (or detention) imposed in relation to a conviction subsequent to the conviction appealed against, to exercise the like powers in regard to him as may be exercised, in relation to an appeal which has been abandoned, by a court of summary jurisdiction in pursuance of section 446(5) of this Act.

#### **452B Supplementary provisions where High Court authorises new prosecution.**

- (1) Where authority is granted under section 452A(1)(d) of this Act, a new prosecution may be brought charging the accused with the same or any similar offence arising out of the same facts; and the proceedings out of which the stated case arose shall not be a bar to such prosecution:

Provided that no sentence may be passed on conviction under the new prosecution which could not have been passed on conviction under the earlier proceedings.

- (2) A new prosecution may be brought under this section, notwithstanding that any time limit (other than the time limit mentioned in subsection (3) below) for the commencement of such proceedings has elapsed.
- (3) Proceedings in a prosecution under this section shall be commenced within two months of the date on which authority to bring the prosecution was granted; and for the purposes of this subsection proceedings shall, in a case where such warrant is executed without unreasonable delay, be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted, and shall in any other case be deemed to be commenced on the date on which the warrant is executed.
- (4) Where the two months mentioned in subsection (3) above elapse and no new prosecution has been brought under this section, the order under section 452A(1)(d) of this Act setting aside the verdict shall have the effect, for all purposes, of an acquittal.

#### **453 Consent by prosecutor to set aside conviction.**

- (1) Where an appeal has been taken under [F302 section 442(1)(a)(i) or (iii)] of this Act or by suspension or otherwise, and the prosecutor, on the appeal being intimated to him, is not prepared to maintain the judgment appealed against, he may by a minute signed

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- by him and written on the complaint or lodged with the clerk of court consent to the conviction and sentence being set aside, either in whole or in part. Such minute shall set forth the grounds on which the prosecutor is of opinion that the judgment cannot be maintained.
- (2) A copy of any minute under the foregoing subsection shall be sent by the prosecutor to the appellant [<sup>F303</sup>or his solicitor], and the clerk of court shall thereupon ascertain from the appellant or his solicitor whether he desires to be heard by the High Court before the appeal is disposed of, and shall note on the record whether or not the appellant so desires, and shall thereafter transmit the complaint and relative proceedings to the Clerk of Justiciary.
- (3) The Clerk of Justiciary on receipt of a complaint and relative proceedings under the last foregoing subsection shall lay them before any judge of the High Court, either in court or in chambers, and such judge, after hearing parties if they desire to be heard, or without hearing parties, may set aside the conviction either in whole or in part and award expenses to the appellant not exceeding [<sup>F304</sup>£60], or may refuse to set aside the conviction, in which case the proceedings shall be returned to the clerk of the inferior court, and the appellant shall then be entitled to proceed with his appeal in the same way as if it had been marked on the date when the complaint and proceedings are returned to the clerk of the inferior court.
- (4) Where proceedings are taken under this section, the preparation of the draft stated case shall be delayed pending the decision of the High Court.
- (5) The power conferred by this section to consent to a conviction and sentence being set aside shall be exercisable—
- (a) where the appeal is by stated case, at any time within [<sup>F305</sup>2 weeks] after the receipt by the prosecutor of the draft stated case; and
  - (b) where the appeal is by suspension at any time within [<sup>F305</sup>2 weeks] after the service on the prosecutor of the bill of suspension.

#### Textual Amendments

**F302** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 40, [Sch. 6 para. 1](#)

**F303** Words in s. 357(1)(a) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, [Sch. 6 Pt. I para. 127\(a\)](#), [Sch. 7 Pt. I](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)

**F304** S. 357(4) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, [Sch. 6 Pt. I para. 127\(c\)](#), [Sch. 7 Pt. I](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)

**F305** Words in s. 357(2) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), [Sch. 6 Pt. I para. 127\(b\)\(i\)](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)

#### [<sup>F306</sup>453] **Appeal by bill of suspension or advocation on ground of miscarriage of justice.**

- (1) Notwithstanding section 449(2) of this Act, a party to a summary prosecution may, where an appeal under section 442 of this Act would be incompetent or would in the circumstances be inappropriate, appeal to the High Court, by bill of suspension against a conviction, or as the case may be by advocation against an acquittal, on the ground of an alleged miscarriage of justice in the proceedings:

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Provided that where the alleged miscarriage of justice is referred to in an application, under section 444(1) of this Act, for a stated case as regards the proceedings (or in a duly made amendment or addition to that application) an appeal under subsection (1) above shall not proceed without the leave of the High Court until the appeal to which the application relates has been finally disposed of or abandoned.

- (2) Sections 452(4)(a) to (e), 452A(1)(d), 452A(3) and 452B of this Act shall apply to appeals under this section as they apply to appeals such as are mentioned in section 444(1) of this Act.
- (3) The foregoing provisions of this section shall be without prejudice to any rule of law relating to bills of suspension or advocacion in so far as such rule of law is not inconsistent with those provisions.]

#### Textual Amendments

**F306** S. 453A–453E inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 3 para. 13, [Sch. 6 para. 7](#)

#### 453AA Leave to appeal against sentence.

- (1) The decision whether to grant leave to appeal for the purposes of section 442(1)(a)(ii) or (iia) of this Act shall be made by a judge of the High Court who shall—
  - (a) if he considers that the note of appeal and other documents sent to the Clerk of Justiciary under section 453B(4)(a) of this Act disclose arguable grounds of appeal, grant leave to appeal; and
  - (b) in any other case—
    - (i) refuse leave to appeal and give reasons in writing for the refusal; and
    - (ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.
- (2) A warrant granted under subsection (1)(b)(ii) above shall not take effect until the expiry of the period of 14 days mentioned in subsection (3) below without an application to the High Court for leave to appeal having been lodged by the appellant under that subsection.
- (3) Where leave to appeal is refused under subsection (1) above the appellant may, within 14 days of intimation under subsection (9) below, apply to the High Court for leave to appeal.
- (4) In deciding an application under subsection (3) above the High Court shall—
  - (a) if, after considering the note of appeal and other documents mentioned in subsection (1) above and the reasons for the refusal, the court is of the opinion that there are arguable grounds of appeal, grant leave to appeal; and
  - (b) in any other case—
    - (i) refuse leave to appeal and give reasons in writing for the refusal; and
    - (ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

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- (5) Consideration whether to grant leave to appeal under subsection (1) or (4) above shall take place in chambers without the parties being present.
- (6) Comments in writing made under subsection (1)(a) or (4)(a) above may, without prejudice to the generality of that provision, specify the arguable grounds of appeal (whether or not they are contained in the note of appeal) on the basis of which leave to appeal is granted.
- (7) Where the arguable grounds of appeal are specified by virtue of subsection (6) above it shall not, except by leave of the High Court on cause shown, be competent for the appellant to found any aspect of his appeal on any ground of appeal contained in the note of appeal but not so specified.
- (8) Any application by the appellant for the leave of the High Court under subsection (7) above—
  - (a) shall be made not less than seven days before the date fixed for the hearing of the appeal; and
  - (b) shall, not less than seven days before that date, be intimated by the appellant to the Crown Agent.
- (9) The Clerk of Justiciary shall forthwith intimate—
  - (a) a decision under subsection (1) or (4) above; and
  - (b) in the case of a refusal of leave to appeal, the reasons for the decision, to the appellant or his solicitor and to the Crown Agent.

#### **453B Appeals against sentence only.**

- (1) An appeal under section 442(1)(a)(ii) of this Act shall be by note of appeal, which shall state the ground of appeal.
- (2) The note of appeal shall, within one week of the passing of the sentence, be lodged with the clerk of the court from which the appeal is to be taken.
- (3) The clerk of court on receipt of the note of appeal shall—
  - (a) send a copy of the note to the respondent or his solicitor; and
  - (b) obtain a report from the judge who sentenced the convicted person.
- (4) The clerk of court shall within two weeks of the passing of the sentence against which the appeal is taken—
  - (a) send to the Clerk of Justiciary the note of appeal, together with the report mentioned in subsection (3)(b) above, a certified copy of the complaint, the minute of proceedings and any other relevant documents; and
  - (b) send copies of that report to the appellant and respondent or their solicitors:

Provided that the sheriff principal of the sheriffdom in which the judgment was pronounced may, where a judge is temporarily absent from duty for any cause, extend the period of two weeks specified in this subsection for such period as the sheriff principal considers reasonable.

- (5) Where the judge's report is not furnished within the period mentioned in subsection (4) above, the High Court may extend such period or, if it thinks fit, hear and determine the appeal without such report.

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- (6) Subsections (3), (4) and (5) of section 444 of this Act shall apply where an appellant fails to comply with the requirement of subsection (2) above as they apply where an applicant fails to comply with any of the requirements of subsection (1) of that section.
- (7) An appellant under section 442(1)(a)(ii) of this Act may at any time prior to the hearing of the appeal abandon his appeal by minute, signed by himself or his solicitor, lodged—
- (a) in a case where the note of appeal has not yet been sent under subsection (4) (a) above to the Clerk of Justiciary, with the clerk of the court;
  - (b) in any other case, with the Clerk of Justiciary, and intimated to the respondent.
- (8) Sections 446, 450 and 452(4)(a) to (e) of this Act shall apply to appeals under section 442(1)(a)(ii) of this Act as they apply to appeals under section 442(1)(a)(i) or (iii) of this Act.

#### **Modifications etc. (not altering text)**

- C101** S. 453B(2) modified by S.I. 1988/110, **rule 130(1)(2)**
- C102** S. 453B(3) extended by S.I. 1988/110, **rule 129(6)**
- C103** S. 453B(3) modified by S.I. 1988/110, **rule 130(1)(2)**
- C104** S. 453B(4) extended by S.I. 1988/110, **rule 129(6)**
- C105** S. 453B(4) modified by S.I. 1988/110, **rule 130(1)(2)**
- C106** S. 453B(5) extended by S.I. 1988/110, **rule 129(6)**
- C107** S. 453B(6) extended by S.I. 1988/110, **rule 129(6)**
- C108** S. 453B(6) modified by S.I. 1988/110, **rule 130(1)(2)**
- C109** Ss. 453B(7)(8), 453C–453E extended by S.I. 1988/110, **rule 129(6)**

#### **453C Disposal of appeal by note of appeal.**

- (1) An appeal against sentence by note of appeal shall be heard by the High Court on such date as it may fix, and the High Court may, subject to section 453D(1) of this Act, dispose of such appeal by—
- (a) affirming the sentence; or
  - (b) if the Court thinks that, having regard to all the circumstances, including any additional evidence such as is mentioned in section 442(2) of this Act, a different sentence should have been passed, quashing the sentence and passing another sentence, whether more or less severe, in substitution therefor:

Provided that the Court shall not in any case increase the sentence beyond the maximum sentence which could have been passed by the inferior court.

- (2) The High Court shall have power in an appeal by note of appeal to award such expenses both in the High Court and in the inferior court as it may think fit.
- (3) Where, following an appeal under section 442(1)(a)(ii) of this Act, the appellant remains liable to imprisonment or detention under the sentence of the inferior court or is so liable under a sentence passed in the appeal proceedings, the High Court shall have power where at the time of disposal of the appeal the appellant—
- (a) was at liberty on bail, to grant warrant to apprehend and imprison (or detain) the appellant for a term, to run from the date of such apprehension, not longer than that part of the term or terms of imprisonment (or detention) specified

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in the sentence brought under review which remained unexpired at the date of liberation; or

- (b) is serving a term or terms of imprisonment (or detention) imposed in relation to a conviction subsequent to the conviction in respect of which the sentence appealed against was imposed, to exercise the like powers in regard to him as may be exercised, in relation to an appeal which has been abandoned, by a court of summary jurisdiction in pursuance of section 446(5) of this Act.

**Modifications etc. (not altering text)**

C110 Ss. 453B(7)(8), 453C–453E extended by S.I. 1988/110, rule 129(6)

**453D Disposal of appeal where appellant insane.**

- (1) In relation to any appeal under section 442(1)(a) of this Act, the High Court shall, where it appears to it that the appellant committed the act charged against him but that he was insane when he did so, dispose of the appeal by—
  - (a) setting aside the verdict of the inferior court and substituting therefor a verdict of acquittal on the ground of insanity; and
  - (b) quashing any sentence imposed on the appellant as respects the complaint and ordering that he be detained in a state hospital or such other hospital as for special reasons the court may specify.
- (2) The provisions of subsection (4) of section 174 of this Act shall apply to an order under subsection (1)(b) above as they apply to an order under that section.

**Modifications etc. (not altering text)**

C111 Ss. 453B(7)(8), 453C–453E extended by S.I. 1988/110, rule 129(6)

**453E Failure of appellant who has been granted bail to appear personally.**

Where an appellant has been granted bail, whether his appeal is under this Part of this Act or otherwise, he shall appear personally in court at the diet appointed for the hearing of the appeal. If he does not appear the High Court shall either—

- (a) dispose of the appeal as if it had been abandoned (in which case subsection (4) of section 446 of this Act shall apply accordingly); or
- (b) on cause shown permit the appeal to be heard in his absence.

**Modifications etc. (not altering text)**

C112 Ss. 453B(7)(8), 453C–453E extended by S.I. 1988/110, rule 129(6)

**454 Convictions not to be quashed on certain grounds.**

- (1) No conviction, sentence, judgment, order of court or other proceeding whatsoever under this Part of this Act shall be quashed for want of form or, where the accused had legal assistance in his defence, shall be suspended or set aside in respect of any objections to the relevancy of the complaint, or to the want of specification therein, or

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to the competency or admission or rejection of evidence at the trial in the inferior court, unless such objections shall have been timeously stated at the trial by the solicitor of the accused.

(2) ..... F308

#### Textual Amendments

**F308** S. 20A(7)(8) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 10(4); S.I. 1996/517, arts. 3(2), 4-6, Sch. 2

#### 455 Other modes of appeal.

- (1) The provisions regulating appeals shall, subject to the provisions of this Part of this Act, be without prejudice to any other mode of appeal competent.
- (2) Any officer of law may serve any bill of suspension or other writ relating to an appeal.

#### 455A Sentencing guidelines.

- (1) In disposing of an appeal under section 442(1)(a)(ii), (iia) or (iii), (b)(ii) or (c) of this Act the High Court may, without prejudice to any other power in that regard, pronounce an opinion on the sentence or other disposal or order which is appropriate in any similar case.
- (2) Without prejudice to any rule of law, a court in passing sentence shall have regard to any relevant opinion pronounced under subsection (1) above.

#### Miscellaneous

#### 456 Actions of damages in respect of proceedings under this Part of this Act.

- (1) No judge, clerk of court or prosecutor in the public interest shall be found liable by any court in damages for or in respect of any proceedings taken, act done, or judgment, decree or sentence pronounced under this Part of this Act, unless—
  - (a) the person suing has suffered imprisonment in consequence thereof; and
  - (b) such proceeding, act, judgment, decree or sentence has been quashed; and
  - (c) the person suing shall specifically aver and prove that such proceeding, act, judgment, decree or sentence was taken, done or pronounced maliciously and without probable cause.
- (2) No such liability as aforesaid shall be incurred or found where such judge, clerk of court or prosecutor shall establish that the person suing was guilty of the offence in respect whereof he had been convicted, or on account of which he had been apprehended or had otherwise suffered, and that he had undergone no greater punishment than was assigned by law to such offence.
- (3) No action to enforce such liability as aforesaid shall lie unless it is commenced within two months after the proceeding, act, judgment, decree or sentence founded on, or in the case where the Act under which the action is brought fixes a shorter period, within that shorter period.



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- (4) In this section “judge” shall not include “sheriff”, and the provisions of this section shall be without prejudice to the privileges and immunities possessed by sheriffs.

#### 457 Acts of Adjournal.

It shall be lawful for the High Court by Act of Adjournal—

- (a) to make rules to give effect to any of the provisions of any enactment relating to summary criminal jurisdiction or procedure, including this Part of this Act and the <sup>M90</sup>Backing of Warrants (Republic of Ireland) Act 1965 and, without prejudice to the generality of this subsection, to make provision for the manner in which an accused person or witness may be cited in any proceedings under this Part of this Act;
- (b) to make rules regulating summary criminal procedure under any enactment, including this Part of this Act;
- (c) to cancel or amend any of the forms of summary criminal procedure under any enactment, including this Part of this Act, or to provide additional forms.
- [<sup>F310</sup>(d) to modify, amend or repeal any enactment, including an enactment contained in this Part of this Act, in so far as that enactment relates to matters with respect to which an Act of Adjournal may be made under this section.]

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#### Textual Amendments

**F310** S. 457(d) added by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 72](#)

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#### Modifications etc. (not altering text)

**C113** S. 457 extended by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [s. 65](#)

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#### Marginal Citations

**M90** [1937 c. 37\(20\)](#).

**Status:**

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**Changes to legislation:**

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