



# Criminal Procedure (Scotland) Act 1975

## 1975 CHAPTER 21

### PART II

#### SUMMARY PROCEDURE

#### 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>F1</sup>and where the court so adjourns the case it shall remand the accused in custody or on bail][<sup>F2</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

- [<sup>F3</sup>(a) where the accused is remanded in custody, three weeks; or  
(b) where he is remanded on bail or is ordained to appear, eight weeks but only on cause shown and otherwise four weeks]

- [<sup>F4</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>F5</sup>(a) it thinks fit or ordain the accused to appear at the adjourned diet;] or  
(b) confirm the order.]

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**Textual Amendments**

- F1 Words inserted by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\), s. 5\(a\)](#)
- F2 Words inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), Sch. 7 para. 59\(a\)](#)
- F3 [S. 380\(1\)\(a\)\(b\)](#) substituted (18.9.1993) for words “three weeks” by 1993 c. 9, s. 47(1), [Sch. 5 para. 1\(6\)](#) (with s. 47(2), [Sch. 6 paras. 1, 2](#)); S.I. 1993/2050, arts. 3(3), 4(1)(c), [Sch.2](#)
- F4 [S. 380\(2\)](#) added by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\), s. 5\(b\)](#)
- F5 [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>F7</sup> it shall be a condition of the [<sup>F8</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>F8</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>F8</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>F8</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>F9</sup>
- (4) On exercising the powers conferred by this section the court shall—

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- (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.

[<sup>F10</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

**F7** S. 141(2)(3) added by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 28(c), **Sch. 6 para. 1**

**F8** Words substituted by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 1 para. 9**

**F9** S. 18(2)–(5) substituted for s. 18(2) by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **s. 7(1)**

**F10** 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 [<sup>F11</sup>convicted] by the court of any offence.

#### Textual Amendments

**F11** Words in s. 382 substituted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(2)**

#### **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)

**C1** S. 383 amended by Licensed Premises (Exclusion of Certain Persons) Act 1980 (c. 32, SIF 68A:1, 2), **s. 1(2)(c)**

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## Probation

### 384 Probation.

(1) [<sup>F12</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>F13</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>F14</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>F15</sup>six months] nor more than three years.

[<sup>F16</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

[ in a case other than that mentioned in paragraph (b) below, by the local  
<sup>F17</sup>(a) authority in whose area he resides or is to reside; or

(b) in a case where, by virtue of section 188(1) of this Act, subsection (2) of this section would not apply, by the probation committee for the area which contains the petty sessions area which would be named in the order]

.]

(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>F18</sup>(a) [<sup>F19</sup>conducive to] securing the good conduct of the offender or [<sup>F20</sup>to] preventing a repetition by him of the offence or the commission of other offences; [<sup>F21</sup>or

(b) where the probation order is to include such a requirement as is mentioned in subsection (5A) [<sup>F22</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:

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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>F23</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>M1</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
- (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>F24</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>F25</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.

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- (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>F20</sup>or (5) (5A), (5B) or (5C)] of this section or under the next following section) and that if he fails to comply therewith or commits another offence during the probation period he will be liable to be 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

- F12** S. 254A inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 34(1); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F13** S. 255 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 19, **Sch. 6 para. 6**
- F14** Words in s. 254(4) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(7)(b)**
- F15** Words in s. 255(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 46(1)(a); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F16** S. 255(1A)-(1C) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 46(1)(b); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F17** Words in s. 257 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. 88**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F18** Words in s. 254(2) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(7)(a)(iv)**
- F19** S. 255(5)(6) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 46(1)(c); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F20** Word 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)(ii); S.I. 1991/850, art. 3, **Schedule**
- F21** S. 254(4A) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(7)(c)**
- F22** S. 256 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. 87, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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- F23** Words in s. 254(4)(b) 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. 85(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F24** S. 254(5) 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. 85(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F25** Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 6 para. 6, Sch. 8**
- F26** S. 254B 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. 86**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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

- C2** S. 384 amended by Licensed Premises (Exclusion of Certain Persons) Act 1980 (c. 32, SIF 39:1), **s. 1(2)(c)**

**Marginal Citations**

- M1** 1978 c. 49(39:1).

**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 [<sup>F27</sup>section 20 or 39 of the <sup>M2</sup>Mental Health (Scotland) Act 1984], that the mental condition of an offender is such as requires and may be susceptible to treatment but is not such as to warrant his detention in pursuance of a hospital order under [<sup>F27</sup>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 [<sup>F28M3</sup>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) ..... <sup>F29</sup>

[<sup>F30</sup>(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

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- 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
- (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>F31</sup>subsection (5) of this section] are made for the treatment of a probationer—
- (a) the [<sup>F32</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

- F27** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(1), **Sch. 3 para. 36(a)**
- F28** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(1), **Sch. 3 para. 36(b)**
- F29** 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**
- F30** 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)
- F31** 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)
- F32** 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

- M2** [1984 c. 36\(85\)](#).
- M3** [1984 c. 36\(85\)](#).



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### **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>F33</sup>(a)] the officer supervising the probationer
  - [<sup>F34</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 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>F35</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>F36</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>F37</sup>; or
  - (d) without prejudice to the continuance in force of the probation order, in a case where the conditions required by the <sup>M4</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.]

[<sup>F38</sup>(2A) for the purposes of subsection (2) above, evidence of one witness shall be sufficient evidence.]

- (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

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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

- F33** 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
- F34** 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
- F35** Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 65(5)
- F36** Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 56, Sch. 7
- F37** Word and s. 387(2)(d) added by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), s. 8
- F38** S. 387(2A) inserted (1.10.1993) by 1993 c. 9, s. 47(1), Sch. 5 para. 1(7) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(4), 4(1)(c)

#### Marginal Citations

- M4** 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 [F39(not being a probation order including a requirement [F40which, while corresponding to a requirement mentioned in paragraph 2 or 3 of Schedule 1A to the Powers of Criminal Courts Act 1973, would if included in a probation order made under that Act fail to accord with a restriction as to days of presentation, participation or attendance mentioned in paragraph 2(4)(a) or (6)(a), or as the case may be 3(3)(a), of that Schedule))] is satisfied that the offender has attained the age of [F4116] years

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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;<sup>F42</sup> that area shall be named in the order [<sup>F43</sup>; and where the order includes a requirement that the probationer perform unpaid work for a number of hours, the number specified shall not exceed one hundred].

(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

- [<sup>F44</sup>(a) that the probationer has attained the age of 16 years;  
 (b) that he proposes to reside, or is residing, in England; and  
 (c) that suitable arrangements for his supervision can be made by the probation committee for the area which contains the petty sessions area in which he resides or will reside]

, 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 [<sup>F45</sup>or to vary any requirement for performance of unpaid work so that such hours as remain to be worked do not exceed one hundred]; 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 [<sup>F46</sup>paragraph 5(3) of Schedule 1A to] the <sup>M5</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 [<sup>F46</sup>paragraph 5 of Schedule 1A to] the said Act of 1973 respectively; and  
 (b) [<sup>F47</sup>sub-paragraphs (5) to (7) of paragraph 5 of Schedule 1A to] the said Act of 1973 (functions of supervising officer and medical practitioner where such a requirement has been imposed) shall apply in relation to a probationer who is undergoing treatment in England in pursuance of a requirement imposed by virtue of this subsection as they apply in relation to a probationer undergoing such treatment in pursuance of a requirement imposed by virtue of that section.

(4) Sections 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 [<sup>F48</sup>Schedule 2 to the Criminal Justice Act 1991 shall apply to the order—

- (a) except in the case mentioned in paragraph (b) below, as if that order were a probation order made under section 2 of the Powers of Criminal Courts Act 1973; and  
 (b) in the case of an order which contains a requirement such as is mentioned in subsection (5A) of section 183 or 384 of this Act, as if it were a combination order made under section 11 of the said Act of 1991:

Provided that Part III of that Schedule shall not so apply; and sub-paragraphs (3) and (4) of paragraph 3 of that Schedule shall so apply as if for the first reference in the said sub-paragraph (3) to the Crown Court there were substituted a reference to a court in Scotland and for the other references in those sub-paragraphs to the Crown Court there were substituted references to the court in Scotland.]

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- (5) If it appears on information to a justice acting for the petty sessions area [F49 named in a probation order made or amended under this section that the person to whom the order relates] 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 M5 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.

#### Extent Information

E1 S. 389(3)-(8) extends also to England and Wales see s. 463(1)(b)

#### Textual Amendments

- F39 Words inserted by Community Service by *Offenders (Scotland) Act 1978 (c. 49, SIF 39:1)*, **Sch. 2 para. 3**
- F40 Words in s. 389(1) substituted (1.10.1992) by *Criminal Justice Act 1991 (c. 53)*, s. 16, **Sch. 3, Pt. II, para. 7(3)(a)(i)** (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.
- F41 Word in s. 389(1) substituted (1.10.1992) by *Criminal Justice Act 1991 (c. 53)*, s. 16, **Sch. 3, Pt. II, para. 7(3)(a)(ii)** (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.
- F42 Word in s. 389(1) ceased to have effect (1.10.1992) by virtue of *Criminal Justice Act 1991 (c. 53)*, s. 16, Sch. 3, Pt. II, para. 7(3)(a)(iii) (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.
- F43 Words at the end of s. 389(1) added (1.10.1992) by *Criminal Justice Act 1991 (c. 53)*, s. 16, **Sch. 3, Pt. II, para. 7(3)(a)(iv)** (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.
- F44 S. 389(2)(a)(b)(c) substituted (1.10.1992) for certain words by *Criminal Justice Act 1991 (c. 53)*, s. 16, **Sch. 3, Pt. II, para. 7(3)(b)(i)** (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.
- F45 Words in s. 389(2) inserted (1.10.1992) by *Criminal Justice Act 1991 (c. 53)*, s. 16, **Sch. 3, Pt. II, para. 7(3)(b)(ii)** (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.
- F46 Words in s. 389(3) substituted (1.10.1992) by *Criminal Justice Act 1991 (c. 53)*, s. 16, **Sch. 3, Pt. II, para. 7(3)(c)(i)** (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.
- F47 Words in s. 389(3) substituted (1.10.1992) by *Criminal Justice Act 1991 (c. 53)*, s. 16, **Sch. 3, Pt. II, para. 7(3)(c)(ii)** (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.

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- F48** S. 389(4)(a)(b) and words substituted (1.10.1992) for certain words by Criminal Justice Act 1991 (c. 53), s. 16, **Sch. 3, Pt. II, para. 7(3)(d)** (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.
- F49** Words in s. 389(5) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53), s. 16, **Sch. 3, Pt. II, para. 7(3)(e)** (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.

#### Marginal Citations

- M5** 1973 c. 62(39:1).

**F50** 390 .....

#### Textual Amendments

- F50** S. 390 ceased to have effect (1.10.1992) by virtue of Criminal Justice Act 1991 (c. 53), s. 16, **Sch. 3, Pt. II, para. 7(4)** (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.

### 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>F51</sup> of an offence for which an order is made . . . <sup>F51</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.
- (3) The foregoing provisions of this section shall not affect—
  - [<sup>F52</sup>(a) any right to appeal;]
  - (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>M6</sup>Criminal Justice (Scotland) Act 1949 and is expressed to extend to persons dealt with under section 1(1) of the <sup>M7</sup>Probation of Offenders Act 1907 as well as to convicted persons.

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- (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

**F51** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 63:1\)](#), Sch. 6 para. 1, **Sch. 8**

**F52** [S. 392\(3\)\(a\)](#) substituted (27.7.1993) by [1993 c. 36, s. 79\(13\)](#), **Sch. 5 Pt. I para. 2(9)**

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

**C3** [S. 392](#) amended by [Licensed Premises \(Exclusion of Certain Persons\) Act 1980 \(c. 32, SIF 68A:1, 2\)](#), s. 1(2)(c)

**C4** [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)**

**C5** [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

**M6** [1949 c. 94.\(39:1\)](#).

**M7** [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.

#### *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;

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- [<sup>F53</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>F54</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

**F53** S. 394(b) substituted by [Criminal Law Act 1977 \(c. 45, SIF 39:1\)](#), [Sch. 11 para. 7](#)

**F54** 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>F55</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.

- (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

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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

**F55** 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)

**C6** [S. 395\(1\)](#) excluded by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a), 56(9)(b)(i)**

### [<sup>F56</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.]

#### Textual Amendments

**F56** [S. 395A](#) inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **s. 49**

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

**C7** [S. 395A\(2\)](#) excluded by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a), 56(9)(b)(i)**



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### 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 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)

- C8** S. 396 applied with modifications by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 7(2), 47(4)(a)**
- C9** 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](#)

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- C10** S. 396(1)–(6) excluded by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 56(9)(b)(i)
- C11** 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>F57</sup>, under [<sup>F58</sup>section 90 of the <sup>M8</sup>Magistrates' Courts Act 1980] or under [<sup>F59</sup>Article 95 of the <sup>M9</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

- F57** Words substituted by Criminal Law Act 1977 (c. 45, SIF 39:1), Sch. 11 para. 8
- F58** Words substituted by Magistrates' Courts Act 1980 (c. 43, SIF 39:1), s. 154, Sch. 7 para. 136
- F59** Words substituted by S.I. 1981/1675 (N.I. 26), Sch. 6 Pt. I para. 36

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

- C12** Ss. 397, 398 applied by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 7(2), 47(4)(a)
- C13** 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

- M8** 1980 c. 43(39:1).
- M9** 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 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>F60</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.

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- (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.

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#### Textual Amendments

**F60** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 61](#)

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

- C14** Ss. 397, 398 applied by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), [ss. 7\(2\)](#), 47(4)(a)
- C15** [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>F61</sup>.
- [<sup>F62</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.]

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#### Textual Amendments

- F61** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 6 para. 3](#), [Sch. 8](#)
- F62** [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\(b\)](#)

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

- C16** [S. 399](#) applied with modifications by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), [ss. 7\(2\)](#), 47(4)(a)
- C17** [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](#)

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#### **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)**

**C18** S. 400 applied by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 7(2), 47(4)(a)

**C19** 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

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#### 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>F63</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

**F63** S. 401(3) added by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 63](#)

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

- C20** 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](#)
- C21** 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)

**C22** S. 402 extended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1996 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](#)

#### 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>F64</sup>, or
  - (c) in any petty sessions district in Northern Ireland]

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the court, . . . <sup>F65</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>F64</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>F66</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>F67</sup>under this section, [<sup>F68</sup>section 90 of the <sup>M10</sup>Magistrates' Courts Act 1980] or [<sup>F69</sup>Article 95 of the <sup>M11</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>F67</sup>, [<sup>F68</sup>the said Act of 1980] or [<sup>F69</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:
- [<sup>F70</sup>(4A) The functions of the court to which subsection (4) above relates shall be deemed to include the court's power to apply to the Secretary of State under any regulations made by him under section 24(1)(a) of the <sup>M12</sup>Criminal Justice Act 1991 (power to deduct fines etc. from income support).]

(5) . . . . . <sup>F71</sup>

- (6) Where a transfer of fine order under [<sup>F72</sup>section 90 of the <sup>M13</sup>Magistrates' Courts Act 1980][<sup>F73</sup>Article 95 of the <sup>M14</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, <sup>F74</sup>. 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>M15</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.

#### Textual Amendments

- F64** Words inserted by [Criminal Law Act 1977 \(c. 45, SIF 39:1\)](#), [Sch. 7 para. 2\(2\)](#)
- F65** Words repealed by [Criminal Law Act 1977 \(c. 45, SIF 39:1\)](#), [Sch. 13](#)
- F66** Words inserted by [Criminal Law Act 1977 \(c. 45, SIF 39:1\)](#), [Sch. 7 para. 2\(3\)](#)
- F67** Words substituted by [Criminal Law Act 1977 \(c. 45, SIF 39:1\)](#), [Sch. 7 para. 2\(4\)](#)
- F68** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 39:1\)](#), s. 154, [Sch. 7 para. 137\(a\)](#)
- F69** Words substituted by [S.I. 1981/1675 \(N.I. 26\)](#), [Sch. 6 Pt. I para. 37\(a\)](#)
- F70** [S. 403\(4A\)](#) inserted (3.2.1995) by [1994 c. 33, s. 47\(4\)](#); [S.I. 1995/127](#), art. 2(1), [Sch.](#)
- F71** [S. 403\(5\)](#) repealed by [Criminal Law Act 1977 \(c. 45, SIF 39:1\)](#), [Sch. 13](#)
- F72** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 39:1\)](#), s. 154, [Sch. 7 para. 137\(b\)](#)

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**F73** Words substituted by S.I. 1981/1675 (N.I. 26), **Sch. 6 Pt. I para. 37(b)**

**F74** Proviso in s. 403(4) and words in s. 403(6) repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53), s. 101(2), **Sch. 13** (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.

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

**C23** S. 403 applied with modifications by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 7(2), 47(4)(a)**

**C24** 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

**M10** 1980 c. 43(82).

**M11** S.I. 1981/1675 (N.I. 26).

**M12** 1991 c. 53.

**M13** 1980 c. 43(82).

**M14** S.I. 1981/1675 (N.I. 26)

**M15** 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 than by payment of the fine, he shall inform the clerk of that court how the sentence was enforced.

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

**C25** Ss. 404, 406 applied by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 7(2), 47(4)(a)**

**C26** Ss. 404, 406 excluded by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a), 56(9)(b)(i)**

**C27** 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**

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405 ..... F75

#### Textual Amendments

F75 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)

C28 Ss. 404, 406 applied by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 7(2), 47(4)(a)

C29 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>F76</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>F77</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—

<i>[<sup>F78</sup>Amount of fine or caution</i>	<i>Maximum period of imprisonment</i>
An amount not exceeding £200	7 days
An amount exceeding £200 but not exceeding £500	14 days
An amount exceeding £500 but not exceeding £1,000	28 days
An amount exceeding £1,000 but not exceeding £2,500	45 days



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An amount exceeding £2,500 but not exceeding £5,000	3 months
An amount exceeding £5,000 but not exceeding £10,000	6 months
An amount exceeding £10,000 but not exceeding £20,000	12 months
An amount exceeding £20,000 but not exceeding £50,000	18 months
An amount exceeding £50,000 but not exceeding £100,000	2 years
An amount exceeding £100,000 but not exceeding £250,000	3 years
An amount exceeding £250,000 but not exceeding £1 million	5 years
An amount exceeding £1 million	10 years.]

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- (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—
- an instalment of the fine is not paid at the time ordered; or
  - 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—
- an instalment of the fine is not paid at the time ordered; or
  - 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 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 [F79 subsection (1A)] of this section shall apply to the non-payment of any sum imposed as aforesaid by a court of summary

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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>F80</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>M16</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

- F76** Words in s. 270(2) repealed (1.10.1993) by 1993 c. 8, s. 47(1)(3), Sch. 5 para. 1(25)(a)(iii), **Sch. 7 Pt. I**; S.I. 1993/2050, **arts. 3(4)**, 10(b)
- F77** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 74(1), **Sch. 8 para. 27(3)**
- F78** Table in s. 407(1A) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53), s. 23(2), (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.
- F79** Words in s. 270(2) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(25)(a)(i)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)
- F80** Words in s. 82(1)(a) 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. 34(a)(i)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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

- C30** 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)
- C31** 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)
- C32** 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**

#### Marginal Citations

- M16** 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)

- C33** S. 408 applied by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 7(2)**, 47(4)(a)
- C34** S. 408 excluded by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a)**, 56(9)(b)(i)

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**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>M17</sup>Prisons (Scotland) Act 1952, any sum in part satisfaction of the fine, the term of imprisonment shall be reduced [<sup>F81</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>F81</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 Adjournal 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**

**F81** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **Sch. 7 para. 65**

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

**C35** S. 409 applied with modifications by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 7(2), 47(4)(a)**

**C36** S. 409 excluded by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a), 56(9)(b)(i)**

**C37** 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\(2\)\(l\)](#) (with [ss. 70\(2\), 113\(1\), Sch. 3 para. 4\(4\)](#)); [S.I. 1996/517, arts. 3\(2\), 4-6](#), **Sch. 2**

**Marginal Citations**

**M17** [1952 c. 61\(39:1\)](#).

**410** ..... <sup>F82</sup>

**Textual Amendments**

**F82** [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>F83</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

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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>F84</sup>in a summary cause].

- (2) ..... <sup>F85</sup>

- (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>F86</sup>offender has been imprisoned in consequence of his having defaulted in] payment of the fine.

#### Textual Amendments

**F83** 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**

**F84** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 3, **Sch. 7 para. 66**

**F85** S. 411(2) repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para 3, **Sch. 8**

**F86** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 52, **Sch. 6 para. 3**

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

**C38** S. 411 applied with modifications by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 7(2), 47(4)(a)**

**C39** 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**

**C40** 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**

**C41** S. 411(3) excluded by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a), 56(9)(b)(i)**

## 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)

**C42** 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**

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### *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.
- (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>F88</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

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- (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>F89</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 <sup>F90</sup>. . . in such place (in any part of the United Kingdom) as the local authority may, from time to time, consider appropriate [<sup>F91</sup>and shall, when making any such order, specify therein a period not exceeding one year]].
- (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>M18</sup>Social Work (Scotland) Act 1968.
- (4) Where a child in respect of whom an order is made under this section is also subject to a supervision requirement within the meaning of the 1968 Act, subject to subsection (6) below, the supervision requirement shall be of no effect during any period for which he is required to be detained under the order.
- (5) The Secretary of State may, by regulations made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, make such provision as he considers necessary as regards the detention in secure accommodation (within the meaning of the 1968 Act) of children in respect of whom orders have been made under this section.
- [<sup>F92</sup>(6) Where a child is detained in residential care in pursuance of an order under—
  - (a) subsection (1) above, he shall be released from such detention not later than the date by which half the period specified in the order has

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(following commencement of the detention) elapsed but, without prejudice to subsection (6A) below, until the entire such period has so elapsed may be required by the local authority to submit to supervision in accordance with such conditions as they consider appropriate;

- (b) subsection (1) above or (6B) below, the local authority may at any time review his case and may, in consequence of such review and after having regard to the best interests of the child and the need to protect members of the public, release the child—
  - (i) for such period and on such conditions as the local authority consider appropriate; or
  - (ii) unconditionally.

(6A) Where a child released under paragraph (a) or (b)(ii) of subsection (6) above is subject to a supervision requirement within the meaning of the 1968 Act, the effect of that requirement shall commence, or as the case may be resume, upon such release.

(6B) If, while released under paragraph (a) or (b) of subsection (6) above (and before the date on which the entire period mentioned in the said paragraph (a) has, following commencement of the detention, elapsed), a child commits an offence to which this section applies and (whether before or after that date) pleads guilty to or is found guilty of it a court may, instead of or in addition to making any other order in respect of that plea or finding, order that he be returned to the residential care of the authority which released him and that his detention in their care shall continue for the whole or any part of the period which—

- (a) begins with the date of the order for his return; and
- (b) is equal in length to the period between the date on which the new offence was committed and the date on which that entire period elapses.

(6C) An order under subsection (6B) above for return to residential care—

- (a) shall be taken to be an order for detention in residential care for the purposes of this Act and of any appeal; and
- (b) shall, as the court making that order may direct, either be for a period of residential care before and to be followed by, or to be concurrent with, any period of residential care to be imposed in respect of the new offence (being in either case disregarded in determining the appropriate length of the period so imposed).]

(7) Where a local authority consider it appropriate that a child in respect of whom an order has been made under subsection (1) [<sup>F93</sup>(or (6B))]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

- F89** S. 413 substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 59(1)
- F90** Words in s. 413(1) repealed (1.10.1993) by 1993 c. 9, s. 47(1)(3), Sch. 5 para. 1(32)(a)(i), Sch. 7 Pt. I (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(4), 4(1)(c)
- F91** Words in s. 413(1) added (1.10.1993) by 1993 c. 9, s. 47(1), Sch. 5 para. 1(32)(a)(ii) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(4), 4(1)(c)
- F92** S. 413(6)(6A)-(6C) substituted (1.10.1993) for s. 413(6) by 1993 c. 9, ss. 5, 6, 8, 10 (with ss. 5(1), 6(1), 10, 27, 47(2), Sch. 6 paras. 1, 2, 6, 7); S.I. 1993/2050, art. 3(4)

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**F93** Words in s. 413(7) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(32)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 4(1)(c)**

**Marginal Citations**

**M18** 1968 c.49 (**81:3**).

**414** ..... **F94**

**Textual Amendments**

**F94** 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>F95</sup>415 Detention of young offenders.**

- (1) It shall not be competent to impose imprisonment on a person under 21 years of age.
- (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>F96</sup>(5) in a young offenders institution.]

<sup>F97</sup>(11) ..... ]

**Textual Amendments**

- F95** 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**
- F96** S. 415(5) substituted for s. 415(5)–(10) by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 124(1), **Sch. 8 para. 16**
- F97** S. 415(11) repealed (1.10.1993) by 1993 c. 9, s. 47(3), **Sch. 7 Pt.I** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **art. 3(4)**

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

- C43** S. 415 extended by Contempt of Court Act 1981 (c. 49, SIF 39:3), **s. 15(3)**
- C44** S. 415 excluded by Repatriation of Prisoners Act 1984 (c. 47, SIF 39:1), s. 3, **Sch. para. 4(2)(b)**



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416 ..... F98

**Textual Amendments**

**F98** S. 416 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 8** and S.I. 1983/1580, **art. 3**

417 ..... F99

**Textual Amendments**

**F99** S. 417 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 8**

418 ..... F100

**Textual Amendments**

**F100** 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, ..... F101  
420.

**Textual Amendments**

**F101** 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**

<sup>F102</sup>421 .....

**Textual Amendments**

**F102** S. 421 repealed (1.10.1993) by 1993 c. 9, s. 47(3), **Sch. 7 Pt.I** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **art. 3(4)**

422 ..... F103

**Textual Amendments**

**F103** S. 422 repealed by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(2), **Sch. 3**

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F104 423 .....

#### Textual Amendments

**F104** S. 423 repealed (1.10.1993) by 1993 c. 9, s. 47(3), **Sch. 7 Pt.I** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **art. 3(4)**

#### 424 Detention in precincts of court.

Where a court of summary jurisdiction has power to impose imprisonment [<sup>F105</sup>or 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 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

**F105** 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>M19</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.

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- (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>M20</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

**M19** 1952 c. 61(39:1).

**M20** 1967 c. 77(95).

#### [<sup>F106</sup>426 Legal custody.

Any person required or authorised by or under this Act or [<sup>F107</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.]

#### Textual Amendments

**F106** S. 426 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 69**

**F107** 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 libelled in a complaint shall imply dismissal of the rest of the complaint.

#### 428 Art and part guilt of statutory offence.

[<sup>F108</sup>(1)] A person may be convicted of, and punished for, contravention of any [<sup>F109</sup>enactment], notwithstanding that he was guilty of such contravention as art and part only.

[<sup>F110</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

**F108** 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)**

**F109** Word substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a), 64(1)(2)**

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**F110** 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>M21</sup>Summary Jurisdiction (Scotland) 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**

**M21** 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.

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### 431 Consideration of time spent in custody.

- [<sup>F112</sup>(1)] A court, in passing a sentence of imprisonment or detention . . . <sup>F113</sup> on a person for any offence, shall
- [<sup>F114</sup>(a)] 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 [<sup>F115</sup> or spent in custody awaiting extradition to the United Kingdom;
- (b) specify the date of commencement of the sentence; and
- (c) if that person—
- (i) has spent a period of time in custody on remand awaiting trial or sentence; or
- (ii) is an extradited prisoner for the purposes of this section, and the date specified under paragraph (b) above is not earlier than the date on which sentence is passed, state its reasons for not specifying an earlier date.]
- [<sup>F116</sup>(2) A prisoner is an extradited prisoner for the purposes of this section if—
- (a) he was tried for the offence in respect of which his sentence of imprisonment was imposed—
- (i) after having been extradited to the United Kingdom; and
- (ii) without having first been restored to the state from which extradited or having had an opportunity of leaving the United Kingdom; and
- (b) he was for any period kept in custody while awaiting such extradition.
- (3) In this section “extradited to the United Kingdom” means returned to the United Kingdom—
- (a) in pursuance of extradition arrangements (as defined in section 3 of the Extradition Act 1989);
- (b) under any law which corresponds to that Act and is a law of a designated Commonwealth country (as defined in section 5(1) of that Act);
- (c) under that Act as extended to a colony or under any corresponding law of a colony; or
- [<sup>F117</sup>(cc) in pursuance of arrangements with a foreign state in respect of which an Order in Council under section 2 of the Extradition Act 1870 is in force;]]
- (d) in pursuance of a warrant of arrest endorsed in the Republic of Ireland under the law of that country corresponding to the Backing of Warrants (Republic of Ireland) Act 1965.

#### Textual Amendments

- F112** S. 431 renumbered (18.9.1993) as s. 431(1) by 1993 c. 9, s. 41(4) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), Sch. 2
- F113** Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 7 para. 70 and S.I. 1983/1580, art. 3
- F114** Word in s. 431 inserted (18.9.1993) by 1993 c. 9, s. 41(2) (with s. 47(2), Sch. 6, paras. 1, 2); S.I. 1993/2050, art. 3(3), Sch. 2
- F115** Words in s. 431 inserted (18.9.1993) by 1993 c. 9, s. 41(3) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), Sch. 2
- F116** S. 431(2)(3) inserted (18.9.1993) by 1993 c. 9, s. 41(5) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), Sch. 2

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**F117** S. 431(3)(cc) inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 48(2)**; S.I. 1995/127, art. 2(1), **Sch. 1** Appendix A

#### 432 Deferred sentence.

[<sup>F118</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>F119</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>F120</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 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

**F118** 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**

**F119** Words added by *Criminal Justice (Scotland) Act 1980* (c. 62, SIF 39:1), s. 53(2)

**F120** 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>F121</sup>

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### Textual Amendments

**F121** 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;
- (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>M22</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>F122</sup>£400], shall not exceed [<sup>F122</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>F122</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

**F122** Words substituted by [S.I. 1984/526, art. 6](#)

### Marginal Citations

**M22** [1954 c. 48\(39:1\)](#).

## [<sup>F123</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.

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- [ Where a person commits an offence to which this subsection applies by—
- <sup>F124</sup>(1A) (a) driving, attempting to drive, or being in charge of a vehicle, or
- (b) failing to comply with a requirement made under section 7 of the Road Traffic Act 1988 (failure to provide specimen for analysis or laboratory test) in the course of an investigation into whether the offender had committed an offence while driving, attempting to drive or being in charge of a vehicle, or
- (c) failing, as the driver of a vehicle, to comply with subsections (2) or (3) of section 170 of the Road Traffic Act 1988 (duty to stop and give information or report accident),
- the vehicle shall be regarded for the purposes of subsection (1)(a) above as used for the purpose of committing the offence.]

[ Subsection (1A) above applies to an offence under the Road Traffic Act 1988 which

<sup>F125</sup>(1B) is punishable with imprisonment.]

- (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

**F123** S. 362(1)(a)-(d) and words substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) for words by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 64**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

**F124** S. 436(1A) inserted (1.7.1992) by Road Traffic Act 1991 (c. 40), s. 37(1); S.I. 1992/1286, art. 2, Sch.

**F125** S. 436(1B) inserted (1.7.1992) by Road Traffic Act 1991 (c. 40), s. 37(3); S.I. 1992/1286, art. 2, Sch.

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

**C45** S. 436 excluded by Telecommunications Act 1984 (c. 12, SIF 96), s. 75, **Sch. 3 para. 3(b)**

#### <sup>F126</sup>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.]



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### Textual Amendments

**F126** S. 436A added (1.7.1992) by [Road Traffic Act 1991 \(c. 40\)](#), [s.39](#); [S.I. 1992/1286](#), [art. 2](#), Sch.

#### 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.

#### [<sup>F127</sup>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—
  - (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—

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- (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

F127 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.

#### 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>M23</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

M23 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

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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>F129</sup>442 Right of appeal.

- (1) Without prejudice to any right of appeal under section 453A of this Act—
  - (a) any person convicted [<sup>F130</sup>, or found to have committed an offence,] in summary proceedings may appeal under this section to the High Court—
    - (i) against such conviction [<sup>F131</sup> or finding];
    - (ii) against the sentence passed on such conviction;  
[ against his absolute discharge or admonition or any probation order  
<sup>F132</sup>(*ia*) or any community service order under the <sup>M24</sup>Community Service by Offenders (Scotland) Act 1978 or any order deferring sentence;]
  - or;
  - (iii) against both such conviction and such sentence [<sup>F133</sup> or disposal or order];
  - (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 [<sup>F134</sup> on such conviction].
  - <sup>F135</sup>(c) [ the prosecutor in such proceedings may, in any class of case specified by order  
by the Secretary of State under this paragraph, so appeal against the sentence passed on such conviction [<sup>F136</sup> or, whether the person has been convicted or not, against any probation order or any community service order under the Community Service by Offenders (Scotland) Act 1978 or against the person’s absolute discharge or admonition or against any order deferring sentence]] if it appears to the prosecutor that [<sup>F137</sup>, as the case may be—
    - (i) the sentence is unduly lenient;
    - (ii) the making of the probation order or community service order is unduly lenient or its terms are unduly lenient;
    - (iii) to dismiss with an admonition or to discharge absolutely is unduly lenient; or
    - (iv) the deferment of sentence is inappropriate or on unduly lenient conditions;]
- (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.

[ The power of the Secretary of State to make an order under paragraph (c) of  
<sup>F138</sup>(3) subsection (1) above shall be exercisable by statutory instrument; and any order so made shall be subject to annulment in pursuance of a resolution of either House of Parliament.]]

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### Textual Amendments

- F129** 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](#)
- F130** Words in s. 442(1)(a) inserted (27.7.1993) by 1993 c. 36, [s. 68\(3\)\(a\)\(i\)](#)
- F131** Words in s. 442(1)(a)(i) inserted (27.7.1993) by 1993 c. 36, [s. 68\(3\)\(a\)\(ii\)](#)
- F132** S. 442(1)(a)(iia) inserted (27.7.1993) by 1993 c. 36, [s. 68\(3\)\(a\)\(iii\)](#)
- F133** Words in s. 442(1)(a)(iii) added (27.7.1993) by 1993 c. 36, [s. 68\(3\)\(a\)\(iv\)](#)
- F134** Words in s. 442(1)(b)(ii) substituted (1.10.1993) by 1993 c. 9, s. 47(1), [Sch. 5 para. 1\(33\)](#) (with s. 47(2), [Sch. 6 paras. 1, 2](#)); S.I. 1993/2050, [arts. 3\(4\)](#), 4(1)(c)
- F135** S. 442(1)(c) inserted (1.10.1993) by 1993 c. 9, [s. 42\(2\)\(a\)](#) (with s. 47(2), [Sch. 6 paras. 1, 2](#)); S.I. 1993/2050, [art. 3\(4\)](#)
- F136** Words in s. 442(1)(c) inserted (27.7.1993) by 1993 c. 36, [s. 68\(3\)\(b\)\(i\)](#)
- F137** Words in s. 442(1)(c) substituted (27.7.1993) by 1993 c. 36, [s. 68\(3\)\(b\)\(ii\)](#)
- F138** S. 442(3) inserted (1.10.1993) by 1993 c. 9, [s. 42\(2\)\(b\)](#) (with s. 47(2), [Sch. 6 paras. 1, 2](#)); S.I. 1993/2050, [art. 3\(4\)](#)

### Marginal Citations

- M24** 1978 c. 49

## 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

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- (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—
  - (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 [<sup>F140</sup>convicted]person [<sup>F140</sup>, or as the case may be a person found to have committed an offence,] desires to appeal [<sup>F141</sup>. . . , under section 442(1)(a)(ii) [<sup>F142</sup>or (iia)] of this Act [<sup>F143</sup>, or the prosecutor desires so to appeal by virtue of section 442(1) (c) thereof,]he shall pursue such appeal in accordance with the provisions of sections 453B to 453E of this Act:

[<sup>F144</sup>; but nothing in this section shall prejudice any right to proceed by bill of suspension, or as the case may be advocacy, against an alleged fundamental irregularity relating to the imposition of the sentence.]

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### Textual Amendments

- F140** Words in s. 442B inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(10)(a)**
- F141** Words in s. 442B repealed (27.7.1993) by 1993 c. 36, s. 79(13)(14), Sch. 5 Pt. I para. 2(10)(b), **Sch. 6 Pt. I**
- F142** Words in s. 442B inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(1)(c)**
- F143** Words in s. 442B inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(34)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 4(1)(c)**
- F144** Words in the proviso in s. 442B substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(34)(c)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 4(1)(c)**

### 443 Appeals against hospital orders, etc.

Where a hospital order [<sup>F145</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>F146</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>F147</sup>sentence].

### Textual Amendments

- F145** 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)**
- F146** 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)**
- F147** Word substituted by **Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 2, Sch. 6 para. 7**

### [<sup>F148</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 [<sup>F149</sup>(or disposal or order)].

- (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 [<sup>F149</sup>(or disposal or order)].

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### Textual Amendments

**F148** S. 443A inserted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), [ss. 47\(4\)\(a\), 68\(1\)](#)

**F149** Words in [s. 443A\(1\)\(2\)](#) added (27.7.1993) by 1993 c. 36, s. 79(13), [Sch. 5 Pt. I para. 2\(11\)](#)

## 444 Manner and time of appeal.

- [<sup>F150</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 [<sup>F151</sup>or disposal or order], 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.
  - (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 [<sup>F152</sup>subsection (3) of] this section in like manner as an application to review the decision of an inferior court on a grant of [<sup>F153</sup>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;

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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) ..... F154

**Textual Amendments**

**F150** S. 444(1)(1A)(1B) substituted for s. 444(1) by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 3(a), **Sch. 6 para. 7**

**F151** Words in s. 444(1)(b) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(12)**

**F152** Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 3(b), **Sch. 6 para. 7**

**F153** Words substituted by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch.1 para. 10**

**F154** S. 444(6) repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 8**

445 ..... F155

**Textual Amendments**

**F155** 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.**

[<sup>F156</sup>(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 [<sup>F157</sup>bail] shall be disposed of by the court within 24 hours after such application has been made. The appellant, if dissatisfied with the [<sup>F158</sup>conditions imposed], or on refusal of [<sup>F157</sup>bail], may, within 24 hours after the judgment of the 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>F157</sup>bail] on such conditions as such court or judge may think fit, or to refuse [<sup>F157</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>F158</sup>conditions imposed] or on account of refusal of [<sup>F157</sup>bail] by a court of summary jurisdiction.

(4) If an appellant who has been granted [<sup>F157</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>F157</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>F157</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



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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

- F156** S. 446(1) substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 5, **Sch. 6 para. 7**
- F157** Word substituted by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 1 para. 11(a)**
- F158** Words substituted by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 1 para. 11(b)**

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

- C46** S. 446(2) applied by Extradition Act 1989 (c. 33, SIF 48), s. 10(13)

### 447 Draft stated case to be prepared.

- [<sup>F159</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>F160</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>F161</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.

#### Textual Amendments

- F159** S. 447(1) substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 6, **Sch. 6 para. 7**
- F160** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 39:1), s. 23(2), **Sch. 2 para. 20**
- F161** 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>F162</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.

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- (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>F163</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>F164</sup>(3) As soon as the case is signed under subsection (2D) above the clerk of court—
- (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 [<sup>F165</sup>(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.

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- (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 [F166 subsection (6) of] this section in like manner as an application to review the decision of an inferior court on a grant of [F167 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.
- (9) ..... F168

#### Textual Amendments

- F162** 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**
- F163** Words repealed by Law Reform (Miscellaneous Provisions (Scotland) Act 1985 (c. 73, SIF 36:1), Sch. 4
- F164** 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**
- F165** Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 7(c), **Sch. 6 para. 7**
- F166** Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 7(d), **Sch. 6 para. 7**
- F167** Word substituted by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 1 para. 12**
- F168** S. 448(9) repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 8**

#### 449 Abandonment of appeal.

- (1) An appellant [F169 in 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 [F170 or the respondent's solicitor], but such abandonment shall be without prejudice to any other competent mode of appeal, review, advocacy or suspension.
- (2) [F171 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

- F169** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 8(a)(i), **Sch. 6 para. 7**
- F170** Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 8(a)(ii), **Sch. 6 para. 7**
- F171** Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 8(b), **Sch. 6 para. 7**

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#### 450 Record of procedure in appeal.

On an appeal [<sup>F172</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>F173</sup> an Act of Adjournal under this Act.

##### Textual Amendments

**F172** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 3 para. 9, **Sch. 6 para. 7**

**F173** Words repealed by [S.I. 1981/386, rule 4\(3\)](#)

#### [<sup>F174</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.]

##### Textual Amendments

**F174** [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

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they consider it appropriate, the appeal shall be heard and determined in accordance with subsection (1) above.

#### [<sup>F176</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;
  - (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

**F176** 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)

**C47** S. 452(4)(a)–(e) extended by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 81(8)

**C48** S. 452(4)(a)–(e) extended by [Consumer Protection Act 1987 \(c. 43, SIF 109:1\)](#), s. 17(8)

**C49** 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](#)

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#### **452A Disposal of stated case appeal.**

- (1) The High Court may, subject [<sup>F177</sup>to subsection (2) below and]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.

[<sup>F178</sup>(2) The High Court shall, in an appeal—

- (a) against both conviction and sentence [<sup>F179</sup>(“sentence” being construed in this subsection and in subsection (3) below as including disposal or order)], subject to section 453D(1) of this Act, dispose of the appeal against sentence; or

(b) by the prosecutor, against sentence, dispose of the appeal, 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
- (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.

[<sup>F180</sup>(4A) Any reference in subsection (4) above to convicting and sentencing shall be construed as including a reference to convicting and making some other disposal or convicting and deferring sentence.]

- (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—

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- (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.

#### Textual Amendments

**F177** Words in s. 452A(1) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(35)(a)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 10(b)**

**F178** S. 452A(2) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(35)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 10(b)**

**F179** Words in s. 452A(2) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(13)(a)**

**F180** S. 452A(4A) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(13)(b)**

#### 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] <sup>F181</sup>Prosecutor's consent to or application for setting aside of conviction.

- (1) Where—
  - (a) an appeal has been taken under section 442(1)(a)(i) or (iii) of this Act or by suspension or otherwise and the prosecutor is not prepared to maintain the judgment appealed against he may, by a relevant minute, consent to the conviction being set aside either in whole or in part; or

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- (b) no such appeal has been taken but the prosecutor is, at any time, not prepared to maintain the judgment on which a conviction is founded he may, by a relevant minute, apply for the conviction so to be set aside.
- (2) For the purposes of subsection (1) above, a “relevant minute” is a minute, signed by the prosecutor—
- (a) setting forth the grounds on which he is of the opinion that the judgment cannot be maintained; and
  - (b) written on the complaint or lodged with the clerk of court.
- (3) A copy of any minute under subsection (1) above shall be sent by the prosecutor to the convicted person or his solicitor and the clerk of court shall—
- (a) thereupon ascertain, and note on the record, whether that person or solicitor desires to be heard by the High Court before the appeal, or as the case may be application, is disposed of; and
  - (b) thereafter transmit the complaint and relative proceedings to the Clerk of Justiciary.
- (4) The Clerk of Justiciary, on receipt of a complaint and relative proceedings transmitted under subsection (3) above, shall lay them before any judge of the High Court either in court or in chambers who, after hearing parties if they desire to be heard, may—
- (a) set aside the conviction either in whole or in part and—
    - (i) award such expenses to the convicted person, both in the High Court and in the inferior court, as the judge may think fit; and
    - (ii) where the conviction is set aside in part, pass another (but not more severe) sentence in substitution for the sentence imposed in respect of that conviction; or
  - (b) refuse to set aside the conviction, in which case the complaint and proceedings shall be returned to the clerk of the inferior court.
- (5) Where an appeal has been taken and the complaint and proceedings in respect of that appeal returned under subsection (4)(b) above, the appellant shall be entitled to proceed with the appeal as if it had been marked on the date of their being received by the clerk of the inferior court on such return.
- (6) Where an appeal has been taken and a copy minute in respect of that appeal sent under subsection (3) above, the preparation of the draft stated case shall be delayed pending the decision of the High Court.
- (7) The period from an application being made under subsection (1)(b) above until its disposal under subsection (4) above (including the day of application and the day of disposal) shall, in relation to the conviction to which the application relates, be disregarded in any computation of time specified in any provision of this Part of this Act relating to appeals.]

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#### Textual Amendments

**F181** S. 453 substituted (18.9.1993) by 1993 c. 9, s.43 (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(3), 4(1)(a), **Sch. 2**



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### [<sup>F182</sup>453AAppeal 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:

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 advocation in so far as such rule of law is not inconsistent with those provisions.]

#### Textual Amendments

**F182** 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

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- (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.
- (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) [<sup>F184</sup>or (ia)] [<sup>F185</sup>, or by virtue of section 442(1)(c)], of this Act shall be by note of appeal, which shall state the ground of appeal.
- [<sup>F186</sup>(2) The note of appeal shall, where the appeal is—
  - (a) under section 442(1)(a)(ii) [<sup>F184</sup>or (ia)] be lodged, within one week of the passing of the sentence [<sup>F187</sup>(or as the case may be of the making of the order disposing of the case or deferring sentence)], with the clerk of the court from which the appeal is to be taken; or
  - (b) by virtue of section 442(1)(c) be so lodged within four weeks of such passing [<sup>F188</sup>(or making)].
- (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 [<sup>F189</sup>(or as the case may be who disposed of the case or deferred sentence)].
- (4) The clerk of court shall within two weeks of the passing of the sentence [<sup>F190</sup>(or within two weeks of the disposal or order)] against which the appeal is taken—

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- (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.
- (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 [F191(2)(a) 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) [F184 or (iia)] [F185], or by virtue of section 442(1)(c), 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) [F184 or (iia)] [F185], or by virtue of section 442(1)(c), of this Act as they apply to appeals under section 442(1)(a)(i) or (iii) of this Act [F192] except that, for the purposes of such application to any appeal by virtue of section 442(1)(c), references in subsections (1) to (3) of section 446 to the appellant shall be construed as references to the convicted person and subsections (4) and (5) of section 446 shall be disregarded].

#### Textual Amendments

- F184** Words in s. 452B(1)(2)(7)(8) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(14)(a)**
- F185** Words in s. 453B(1)(7)(8) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(36)(a)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 4(1)(c)**
- F186** S. 453B(2) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(36)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 4(1)(c)**
- F187** Words in s. 452B(2)(a) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(14)(b)(i)**
- F188** Words in s. 452B(2)(b) added (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(14)(b)(ii)**
- F189** Words in s. 452B(3)(b) added (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(14)(c)**
- F190** Words in s. 452B(4) added (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(14)(d)**
- F191** Word in s. 453B(6) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(36)(c)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 4(1)(c)**
- F192** Words in s. 453B(8) added (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(36)(d)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 4(1)(c)**

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

- C50** S. 453B(3) extended by S.I. 1988/110, **rule 129(6)**
- C51** S. 453B(3) modified by S.I. 1988/110, **rule 130(1)(2)**

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- C52 S. 453B(4) extended by S.I. 1988/110, rule 129(6)
- C53 S. 453B(4) modified by S.I. 1988/110, rule 130(1)(2)
- C54 S. 453B(5) extended by S.I. 1988/110, rule 129(6)
- C55 S. 453B(6) extended by S.I. 1988/110, rule 129(6)
- C56 S. 453B(6) modified by S.I. 1988/110, rule 130(1)(2)
- C57 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) [<sup>F193</sup>or (iia)] [<sup>F194</sup>, or by virtue of section 442(1)(c),] of this Act, the [<sup>F195</sup>convicted person] 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 [<sup>F195</sup>convicted person]—
  - (a) was at liberty on bail, to grant warrant to apprehend and imprison (or detain) the [<sup>F195</sup>convicted person] 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; 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.
- [<sup>F196</sup>(4) In subsection (1) above, “appeal against sentence” shall, without prejudice to the generality of the expression, be construed as including an appeal under section 442(1)(a)(iia), and any appeal under section 442(1)(c), of this Act; and without prejudice to subsection (5) below, other references to sentence in that subsection and in subsection (3) above shall be construed accordingly.
- (5) In disposing of any appeal in a case where the accused has not been convicted, the High Court may proceed to convict him; and where it does, the reference in subsection (3) above to the conviction in respect of which the sentence appealed against was imposed shall be construed as a reference to the disposal or order appealed against.]

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#### Textual Amendments

- F193** Words in s. 453C inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(15)(a)**
- F194** Words in s. 453C(3) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(37)(a)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 4(1)(c)**
- F195** Word in s. 453C substituted (1.10.1993) by 1993 c. 9, ss. 47(1), **Sch. 5 para. 1(37)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 4(1)(c)**
- F196** S. 453C(4)(5) added (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(15)(b)**

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

- C58** Ss. 453B(7)(8), 453C–453E extended by S.I. 1988/110, **rule 129(6)**
- C59** S. 183 amended by **Licensed Premises (Exclusion of Certain Persons) Act 1980** (c. 32, SIF 68A:1, 2), **s. 1(2)(c)**

### 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—
- setting aside the verdict of the inferior court and substituting therefor a verdict of acquittal on the ground of insanity; and
  - 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)

- C60** 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—

- 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
- on cause shown permit the appeal to be heard in his absence.

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

- C61** 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

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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 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) ..... F197

#### Textual Amendments

F197 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

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the case where the Act under which the action is brought fixes a shorter period, within that shorter period.

- (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>M25</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>F199</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.]

#### Textual Amendments

**F199** S. 457(d) added by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **Sch. 7 para. 72**

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

**C62** S. 457 extended by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **s. 65**

#### Marginal Citations

**M25** [1937 c. 37\(20\)](#).

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