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Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PART II

SUMMARY PROCEDURE

CONVICTION AND SENTENCE

Miscellaneous provisions as to conviction, sentence, etc.

427 Conviction of part only of charge.

A conviction of a part or parts only of the charge or charges labelled in a complaint shall imply dismissal of the rest of the complaint.

428 Art and part guilt of statutory offence.

[^{F1}(1)] A person may be convicted of, and punished for, contravention of any [^{F2}enactment], notwithstanding that he was guilty of such contravention as art and part only.

[^{F3}(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

- F1** 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)**
- F2** Word substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a), 64(1)(2)**
- F3** S. 428(2) inserted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a), 64(1)(2)**

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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 ^{M1}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

M1 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.

A court, in passing a sentence of imprisonment or detention . . . ^{F5} on a person for any offence, shall, in determining the period of imprisonment or detention, have regard to any period of time spent in custody by that person on remand awaiting trial or sentence.

Textual Amendments

F5 Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 70](#) and [S.I. 1983/1580, art. 3](#)

432 Deferred sentence.

[^{F6}(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 [^{F7}; 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.]

[^{F8}(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

F6 [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](#)

F7 Words added by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [s. 53\(2\)](#)

F8 [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.

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- (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 . . . ^{F9}

Textual Amendments

F9 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 ^{M2}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 [^{F10}£400], shall not exceed [^{F10}£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 [^{F10}£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

F10 Words substituted by [S.I. 1984/526, art. 6](#)

Marginal Citations

M2 [1954 c. 48\(39:1\)](#).

[^{F11}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—

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- (a) has been used for the purpose of committing, or facilitating the commission of, any offence; or
 - (b) was intended by him to be used for that purpose,
- that property shall be liable to forfeiture, and any property forfeited under this section shall be disposed of as the court may direct.
- (2) Any reference in this section to facilitating the commission of an offence shall include a reference to the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.]

Textual Amendments

F11 S. 436 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 71](#)

Modifications etc. (not altering text)

C1 S. 436 excluded by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 75, [Sch. 3 para. 3\(b\)](#)

^{F12}**436A Disqualification in Scotland where vehicle used to commit offence.**

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

437 Warrant of search for forfeited articles.

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

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

issue a warrant of search which may be executed according to law; and for the purposes of this section, any reference to a justice of the peace includes a reference to the sheriff and to a magistrate.

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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.

[^{F13}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—
 - (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

F13 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

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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 ^{M3}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

M3 1954 c. 48(39:1).

441 Provision for court comprising more than one judge.

In any proceedings in a court of summary jurisdiction consisting of more than one judge, the signature of one judge shall be sufficient in all warrants or other proceedings prior or subsequent to conviction, although the presence and signature of two or more judges may be necessary to conviction of the offence in respect of which such warrants are granted or proceedings take place, and it shall not be necessary that the judge so signing shall be one of the judges trying or dealing with the case otherwise.

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