



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PART II

SUMMARY PROCEDURE

Procedure prior to trial

294 Power of constable to take offenders into custody.

- (1) Without prejudice to any other powers of arrest, any constable may take into custody, without warrant—
 - (a) any person who within his view commits any of the offences mentioned in Schedule 1 to this Act, if the constable does not know and cannot ascertain his name and address;
 - (b) any person who has committed, or whom he has reason to believe to have committed, any of the offences mentioned in Schedule 1 to this Act, if the constable does not know and cannot ascertain his name and address or has reasonable ground for believing that he will abscond.
- [^{F1}(2) Where a person has been arrested under this section, the officer in charge of a police station may—
 - (a) liberate him upon a written undertaking, signed by him and certified by the said officer, in terms of which that person undertakes to appear at a specified court at a specified time; or
 - (b) liberate him without any such undertaking; or
 - (c) refuse to liberate him; and such refusal and the detention of that person until his case is tried in the usual form shall not subject the officer to any claim whatsoever.
- (3) A person in breach of an undertaking given by him under subsection (2)(a) above without reasonable excuse shall be guilty of an offence and liable to the following penalties—
 - (a) a fine not exceeding [^{F2}level 3 on the standard scale], and

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- (b) imprisonment for a period—
 - (i) where conviction is in the district court, not exceeding 60 days; or
 - (ii) where conviction is in the sheriff court, not exceeding 3 months.
- (4) The penalties provided for in subsection (3) above may be imposed in addition to any other penalty which it is competent for the court to impose, notwithstanding that the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.
- (5) In any proceedings relating to an offence under this section, a writing, purporting to be such an undertaking as is mentioned in subsection (2)(a) above and bearing to be signed and certified, shall be sufficient evidence of the terms of the undertaking given by the arrested person.]

Textual Amendments

- F1** S. 294(2)–(5) substituted for s. 294(2) by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), **s. 7(2)**
- F2** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289G, 457A**

[^{F3}295 Interim liberation by officer in charge of police station.

- (1) Where a person has been arrested and charged with an offence which may be tried summarily, the officer in charge of a police station may—
 - (a) liberate him upon a written undertaking, signed by him and certified by the said officer, in terms of which that person undertakes to appear at a specified court at a specified time; or
 - (b) liberate him without any such undertaking; or
 - (c) refuse to liberate him, and such refusal and the detention of that person until his case is tried in the usual form shall not subject the officer to any claim whatsoever.
- (2) A person in breach of an undertaking given by him under subsection (1) above without reasonable excuse shall be guilty of an offence and liable on summary conviction to the following penalties—
 - (a) a fine not exceeding [^{F4}level 3 on the standard scale]; and
 - (b) imprisonment for a period—
 - (i) where conviction is in the district court, not exceeding 60 days; or
 - (ii) where conviction is in the sheriff court, not exceeding 3 months.
- (3) Subsections (4) and (5) of section 294 of this Act shall, subject to any necessary modifications, apply for the purposes of this section as they apply for the purposes of that section.]

Textual Amendments

- F3** S. 295 substituted by [Bail etc. \(Scotland\) Act 1980 \(c. 4\)](#), **s. 8**
- F4** Words substituted by virtue of [Criminal Procedure \(Scotland\) 1975 \(c. 21, SIF 39:1\)](#), **s. 289G**

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Modifications etc. (not altering text)

- C1 S. 295(1) excluded by [Prevention of Terrorism \(Temporary Provisions\) Act 1984 \(c. 8, SIF 39:2\)](#), s. 12(7)
- C2 S. 295(1) excluded by [Prevention of Terrorism \(Temporary Provisions\) Act 1989 \(c. 4, SIF 39:2\)](#), s. 15(8)

296 Police liberation or detention of children arrested.

- (1) Where a person who is apparently a child is apprehended, with or without warrant, and cannot be brought forthwith before a sheriff sitting summarily, a superintendent or inspector of police, or other officer of police of equal or superior rank, or the officer in charge of the police station to which he is brought, shall inquire into the case, and may liberate him on an [^{F5}undertaking] that he will attend at the hearing of the charge being entered into by him or his parent or guardian [^{F6}; and such undertaking shall be in writing, signed by the child or the parent or guardian as the case may be, and certified by the said officer; and the said officer shall so liberate the child unless—
- (a) the charge is one of homicide or other grave crime; or
 - (b) it is necessary in his interest to remove him from association with any reputed criminal or prostitute; or
 - (c) the officer has reason to believe that his liberation would defeat the ends of justice.
- (2) Where a person who is apparently a child having been apprehended is not so liberated as aforesaid, the officer of police shall cause him to be detained in a place of safety other than a police station until he can be brought before a sheriff sitting summarily unless the officer certifies—
- (a) that it is impracticable to do so; or
 - (b) that he is of so unruly a character that he cannot safely be so detained; or
 - (c) that by reason of his state of health or of his mental or bodily condition it is inadvisable so to detain him;
- and the certificate shall be produced to the court before which he is brought.
- (3) Where a person who is apparently a child has been detained under this section and is not so liberated as aforesaid and it is decided not to proceed with the charge against him a constable shall so inform the reporter of the local authority for the area in which the child is detained, and the child may continue to be detained in a place of safety until the reporter has decided on the course that should be taken with regard to the child under the provisions of Part III of the ^{M1}Social Work (Scotland) Act 1968.
- (4) A child shall not continue to be detained under this section—
- (a) where the reporter considers the child does not require compulsory measures of care.
 - (b) after the day on which a children’s hearing first sit to consider his case in pursuance of section 37(4) of the Social Work (Scotland) Act 1968, or
 - (c) for a period exceeding seven days.
- [^{F7}(5) Any person, who without reasonable excuse is in breach of an undertaking entered into by him under subsection (1) above after having been given due notice of the time and place of the diet . . . ^{F8}, shall be guilty of an offence, and liable on summary conviction in addition to any other penalty which it is competent for the court to impose on him, to a fine not exceeding [^{F9}level 3 on the standard scale].

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- (6) In any proceedings relating to an offence under this section, a writing, purporting to be such an undertaking as is mentioned in subsection (1) above and bearing to be signed and certified, shall be sufficient evidence of the undertaking given by the accused.]

Textual Amendments

- F5** Word substituted by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), **s. 9(a)**
F6 Words substituted by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), **s. 9(a)**
F7 [S. 296\(5\)](#) added by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), **s. 9(b)**
F8 [S. 127\(5\)](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 44(d)**; S.I. 1996/517, arts. 3(a), 4-6, **Sch. 2**
F9 [S. 128\(1\)\(1A\)\(1B\)](#) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) for s. 128(1) by 1995 c. 20, **s. 30(2)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Marginal Citations

- M1** 1968 c. 49(81:3).

297 Committal of children to custody in place of safety.

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

Provided that in the case of a child over 14 years of age it shall not be obligatory on the court so to commit him if the court certifies that he is of so unruly a character that he cannot safely be so committed or that he is of so depraved a character that he is not a fit person to be so detained [^{F10}]; but the court shall not so certify a child unless such conditions as the Secretary of State may by order made by statutory instrument prescribe are satisfied in relation to the child.]

- (2) A commitment under this section may be varied, or, in the case of a child over 14 years of age, who proves to be of so unruly a character that he cannot safely be detained in such custody, or to be of so depraved a character that he is not a fit person to be so detained, revoked, by the court which made the order, or if application cannot conveniently be made to that court, by a sheriff sitting summarily having jurisdiction in the place where the court which made the order sat, and if it is revoked the child may be committed to prison [^{F11}]; but a commitment shall not be so revoked unless such conditions as the Secretary of State may by order made by statutory instrument prescribe are satisfied in relation to the child.]

Textual Amendments

- F10** Words added (*prosp.*) by [Children Act 1975 \(c. 72, SIF 42:9, 10\)](#), **ss. 70(a)**, 108(2)
F11 Words added (*prosp.*) by [Children Act 1975 \(c. 72, SIF 49:9,10\)](#), **ss. 70(c)**, 108(2)

298 All offences to be bailable.

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

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any offence, and after opportunity shall have been given to the prosecutor to be heard thereon, admit or refuse to admit such person to bail.

(2) Such application shall be disposed of within 24 hours after its presentation to the judge, failing which the accused shall be forthwith liberated.

[^{F12}(3) For the avoidance of doubt, the foregoing provisions of this section apply whether or not the person is in custody at such time as he appears for the disposal of his application.]

Textual Amendments

F12 S. 289(3) added by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 51](#)

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

(1) The following provisions of this section shall apply where a court has refused to admit a person to bail or, where a court has so admitted a person, the bail fixed in his case has not been found.

(2) A court shall, on the application of any such person as aforesaid, have power to review its decision to admit to bail or its decision as to the bail fixed and may, on cause shown, admit the person to bail or, as the case may be, fix bail [^{F13}on different conditions].

(3) An application under this section, where it relates to the original decision of the court, shall not be made before the fifth day after that decision and, where it relates to a subsequent decision, before the fifteenth day thereafter.

(4) Nothing in the provisions of this section shall affect any right of a person to appeal against the decision of a court in relation to admitting to bail or to the bail fixed.

(5) ^{F14}

Textual Amendments

F13 Words substituted by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), [Sch. 1 para. 6](#)

F14 Ss. 299(5), 301, 302, 303(2)(3) repealed by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), [Sch. 2](#)

299A Application by prosecutor for review of court’s decision to grant bail.

(1) On an application by the prosecutor at any time after a court has granted bail to a person the court may, where the prosecutor puts before the court material information which was not available to it when it granted bail to that person, review its decision.

(2) On receipt of an application under subsection (1) above the court shall—
(a) intimate the application to the person granted bail;
(b) fix a diet for hearing the application and cite that person to attend the diet; and
(c) where it considers that the interests of justice so require, grant warrant to arrest that person.

(3) On hearing an application under subsection (1) above the court may—
(a) withdraw the grant of bail and remand the person in question in custody; or

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- (b) grant bail, or continue the grant of bail, either on the same or on different conditions.
- (4) Nothing in the foregoing provisions of this section shall affect any right of appeal against the decision of a court in relation to bail.

300 Appeal in respect of bail.

- (1) Where an application for bail by a person charged with an offence under this Part of this Act is refused or where the applicant is dissatisfied with the amount of bail fixed, he may appeal to the High Court and that court may in its discretion order intimation to the prosecutor and, where an application for bail by any such person is granted [^{F16}or where the person is ordained to appear], the prosecutor, if dissatisfied with the granting of bail or with the amount fixed [^{F16}or that such person has been ordained to appear] may appeal in like manner and, subject as hereinafter provided, the applicant shall in such case not be liberated before such appeal is disposed of.
- (2) Notice in writing shall be immediately given by the party appealing under this section to the other party.
- (3) An appeal under this section shall be disposed of by the High Court or any Lord Commissioner of Justiciary in court or in chambers after such inquiry and hearing of the parties as shall seem just.
- (4) When an appeal is taken by the prosecutor under this section either against the grant of bail or against the amount fixed, the applicant to whom bail has been granted shall, if the bail fixed shall have been found by him, be liberated after 72 hours, or where the place of application is in the Outer Hebrides or in Orkney or Zetland 96 hours, from the granting of the application, whether the appeal be disposed of or not, unless the High Court shall grant order for his further detention in custody. In computing the aforesaid periods, Sundays and public holidays, whether general or court holidays, shall be excluded.
- [^{F17}(4A) When an appeal is taken by the prosecutor under this section against the fact that the person has been ordained to appear, subsection (4) above shall apply as it applies in the case of an appeal against the granting of bail or against the amount fixed.]
- (5) ^{F18}
- (6) Where an appeal under this section by the prosecutor is refused, the High Court may award expenses against him, but no court or other fees shall be exigible from, and no expenses shall be awarded against, an applicant in respect of his application or of any appeal therein.

Textual Amendments

- F16** Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 62(4)(a)
- F17** S. 69(2) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), Sch. 6 Pt. 1 para. 26(c); S.I. 1996/517, arts. 3(2), 4-6, Sch. 2
- F18** S. 72 renumbered as s. 72(1) (31.3.1996 subject to transitional provisions in the commencing S.I.) by 1995 c. 20, s. 117(1), Sch. 6 Pt. 1 para. 27(a); S.I. 1996/517, arts. 3(2), 4-6, Sch. 2

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301, **F19**
302.

Textual Amendments

F19 Ss. 299(5), 301, 302, 303(2)(3) repealed by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 2**

303 Caution and bail.

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

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

(2) **F20**

Textual Amendments

F20 Ss. 299(5), 301, 302, 303(2)(3) repealed by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 2**

304 Power to order parents to give security for child's good behaviour.

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

305 Intimation to solicitor.

In any proceedings under this Part of this Act the accused, if [^{F21}arrested], shall immediately on [^{F21}such arrest] be entitled,

[^{F22}(a)]if he so desires, to have intimation sent to a solicitor, and to have a private interview with such solicitor prior to being brought before the court;

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[^{F23}(b) to be told what his rights under paragraph (a) above are.]

Textual Amendments

- F21** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **Sch. 7 para. 52(a)**
F22 Word inserted by virtue of [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **Sch. 7 para. 52(b)**
F23 [S. 305\(b\)](#) inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **Sch. 7 para. 52(c)**

306 Separation of children from adults at courts, etc.

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

307 Attendance at court of parent of child charged with an offence, etc.

- (1) Where a child is charged with any offence, his parent or guardian may in any case, and shall, if he can be found and resides within a reasonable distance, be required to attend at the court before which the case is heard or determined during all the stages of the proceedings, unless the court is satisfied that it would be unreasonable to require his attendance.
- (2) Where the child is arrested, the constable by whom he is arrested or the officer of police in charge of the police station to which he is brought shall cause the parent or guardian of the child, if he can be found, to be warned to attend at the court before which the child will appear.
- (3) For the purpose of enforcing the attendance of a parent or guardian and enabling him to take part in the proceedings and enabling orders to be made against him, rules may be made under section 457 of this Act, for applying, with the necessary adaptations and modifications, such of the provisions of this Part of this Act as appear appropriate for the purpose.
- (4) The parent or guardian whose attendance shall be required under this section shall be the parent or guardian having the actual possession and control of the child:

Provided that, if that person is not the father, the attendance of the father may also be required.
- (5) The attendance of the parent of a child shall not be required under this section in any case where the child was before the institution of the proceedings removed from the custody or charge of his parent by an order of a court.

308 Notice to local authority of charge against a child.

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

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

309 Forms of procedure.

- (1) The forms of procedure under this Part of this Act shall be in the forms set out in Schedule 2 to the ^{M2}Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act or as nearly as may be in such forms.
- (2) Warrants of apprehension and search shall be signed by the judge granting the same, but all other warrants, orders of court, and sentences may be signed either by the judge or by the clerk of court, and execution upon any warrant, order of court, or sentence may proceed either upon such warrant, order of court, or sentence itself or upon an extract thereof issued and signed by the clerk of court.
- (3) Where, as preliminary to any procedure, a sworn information is required, such information may be sworn to before any judge, whether the subsequent procedure be in his court or another court.

Marginal Citations

M2 1954 c. 48(39:1).

310 Incidental applications.

Where prior to [^{F24}or after] the presentation of a complaint it is necessary to apply to a court for any warrant or order of court as incidental to . . . ^{F25} proceedings by complaint, or where a court has power to grant any warrant or order of court, although no subsequent proceedings by complaint may follow thereon, such application may be by petition at the instance of a prosecutor in the form set out in Part I of Schedule 2 to the ^{M3}Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act or as nearly as may be in such form and, where necessary for the execution of any such warrant or order of court, warrant to break open lockfast places shall be implied.

Textual Amendments

F24 Words inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 53](#)

F25 Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 6 para. 1](#), [Sch. 8](#)

Modifications etc. (not altering text)

C3 [S. 310](#) applied by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), [s. 81\(2\)](#)

C4 [S. 310](#) extended by [S.I. 1988/110](#), [rules 154\(1\)](#), 156

C5 [S. 310](#) applied by [S.I. 1986/2184](#), [arts. 2\(1\)](#), 4

C6 [S. 310](#) applied (31.10.1994) by [1994 c. 26, s. 98\(2\)\(a\)](#); [S.I. 1994/2550](#), [art. 2](#)

Marginal Citations

M3 1954 c. 48(39:1).

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310A Abolition of private summary prosecutions.

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

311 Complaint.

- (1) All proceedings under this Part of this Act for the trial of offences or recovery of penalties shall be instituted by complaint in the form set out in Part II of Schedule 2 to the ^{M4}Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act or as nearly as may be in such form.
- (2) Such complaint shall be signed by the prosecutor or by any solicitor on behalf of a prosecutor other than the public prosecutor of a court.
- (3) A solicitor may appear for and conduct any prosecution on behalf of a prosecutor other than the public prosecutor of a court.
- (4) A complaint at the instance of a private prosecutor for an offence at common law or for a statutory offence where imprisonment without the option of a fine is competent shall, unless otherwise provided in any statute, require the concurrence of the public prosecutor of the court in which the complaint is brought.
- (5) Where a complaint includes any statutory charge a notice in the form set out in Form No. 1 of Part III of Schedule 2 to the ^{M5}Summary Jurisdiction (Scotland) Act 1954 or in the corresponding form set out in an Act of Adjournal under this Act or as nearly as may be in such form shall be served on the accused with the complaint when he is cited to a diet, and where he is in custody the complaint and such a notice shall be served on him before he is asked to plead, and a copy of any notice so served shall, where the judge is satisfied that the charge is proved, be laid before him by the prosecutor, and shall be entered in the record of the proceedings.

Modifications etc. (not altering text)

C7 S. 311(5) excluded by [Road Traffic Offenders Act 1988 \(c. 53, SIF 107:1\)](#), **ss. 31(2), 32(6)**

Marginal Citations

M4 1954 c. 48(39:1).

M5 1954 c. 48(39:1).

312 Form of the charge in complaint.

The charge in a complaint under this Part of this Act shall be stated in the form, as nearly as may be, of the appropriate form contained in Part II of Schedule 2 to the ^{M6}Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act. No further specification shall be required than a specification similar to that given in that form and—

- (a) a person accused may be named and designed according to the existing practice, or he may be named by the name given by him and designed as of the place given by him as his residence when he is examined on declaration, and it shall not be necessary to set forth any other name or names by which he may be known, or any other address or designation;

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

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any particulars which distinguish them from other goods, articles or things of a similar kind except in cases in which such particulars are essential to the constitution of the offence charged;

- (j) the word “money” shall include all current coin of the realm, post office orders and postal orders, and bank or banker’s notes, and it shall not be necessary to specify in relation to a sum of money whether such sum consisted of gold, silver or other coin, post office orders or postal orders, or bank or banker’s notes, or any of them, but it shall be sufficient to state the sum as consisting of money;
- (k) where any document requires to be referred to, it shall not be necessary to set forth the document or any part of it, but it shall be sufficient to refer to such document by a general description;
- (l) criminal resetting of property shall not be limited to the receiving of property taken by theft or robbery, but shall extend to the receiving of property appropriated by breach of trust and embezzlement, and by falsehood fraud and wilful imposition, and under any complaint charging the resetting of property dishonestly appropriated by any of these means, it shall not be necessary to set forth any details of the offence by which the dishonest appropriation was accomplished, but it shall be sufficient to set forth that the accused received such property, it having been dishonestly appropriated by theft or robbery, or by breach of trust and embezzlement, or by falsehood fraud and wilful imposition, as the case may be;
- (m) under a complaint for robbery, or for theft, or for breach of trust and embezzlement, or for falsehood fraud and wilful imposition, a person accused may be convicted of reset; under a complaint for robbery, or for breach of trust and embezzlement, or for falsehood fraud and wilful imposition, a person accused may be convicted of theft; under a complaint for theft, a person accused may be convicted of breach of trust and embezzlement, or of falsehood fraud and wilful imposition, or may be convicted of theft, although the circumstances proved may in law amount to robbery.

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

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

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- lawfully convicted of the aggravation that such assault or other injurious act was committed with intent to commit such offence;
- (p) the description of any offence in the words of the statute or order contravened, or in similar words, shall be sufficient;
 - (q) the statement that an act was done contrary to a statute or order shall imply a statement that the statute or order applied to the circumstances existing at the time and place of the offence, that the accused was a person bound to observe the same, that any necessary preliminary procedure had been duly gone through, and that all the circumstances necessary to a contravention existed; in the case of the contravention of an order, such statement shall imply a statement that the order was duly made, confirmed, published and generally made effectual according to the law applicable, and was in force at the time and place in question;
 - (r) where the offence is created by more than one section of one or more statutes or orders, it shall be necessary to specify only the leading section or one of the leading sections;
 - (s) it shall not be necessary for an offence punishable under any Act of Parliament to quote the Act of Parliament or any part of it, but it shall be sufficient to allege that the offence was committed contrary to such Act of Parliament, and to refer to the Act and any section of the Act founded on without setting forth the enactment at length;
 - (t) where any act set forth in a complaint as contrary to any Act of Parliament is also criminal at common law, or where the facts proved under such a complaint do not amount to a contravention of the statute, but do amount to an offence at common law, it shall be lawful to convict of the common law offence;
 - (u) when in a trial the evidence shall be sufficient to prove the identity of any person, corporation or company, or of any place, or of any thing, it shall not be a valid objection to the sufficiency of such evidence that any particulars set forth in regard thereto in the complaint have not been proved;
 - (v) any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany in the same section the description of the offence in the statute or order creating the offence, may be proved by the accused, but need not be specified or negatived in the complaint, and no proof in relation to such exception, exemption, proviso, excuse or qualification shall be required on behalf of the prosecution;
 - (w) it shall be competent to include in one complaint both common law and statutory charges;
 - (x) where an offence is alleged to be committed in any special capacity, as by the holder of a licence, master of a vessel, occupier of a house or the like, the fact that the accused possesses the qualification necessary to the commission of the offence shall, unless challenged by preliminary objection before his plea is recorded, be held as admitted;
 - (y) in any proceedings under the Merchant Shipping Acts it shall not be necessary to produce the official register of the ship referred to in the proceedings in order to prove the nationality of the ship, but the nationality of the ship as stated in the complaint shall, in the absence of evidence to the contrary, be presumed;
 - (z) in offences inferring dishonest appropriation of property brought before a court whose power to deal with such offences is limited to cases in which the value of such property does not exceed [^{F27}level 4 on the standard scale] it

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shall be assumed, and it shall not be necessary to state in the charge, that the value of the property does not exceed that sum.

Textual Amendments

F27 Words in s. 134 substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 47(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Marginal Citations

M6 1954 c. 48(39:1).

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

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

314 Orders of court on complaint.

- (1) On any complaint under this Part of this Act being laid before a judge of the court in which the complaint is brought, he shall have power on the motion of the prosecutor—
 - (a) to pronounce an order of court assigning a diet for the disposal of the case to which the accused may be cited as after-mentioned;
 - (b) to grant warrant to apprehend the accused where this appears to the judge expedient;
 - (c) to grant warrant to search the person, dwelling-house and repositories of the accused and any place where he may be found for any documents, articles, or property likely to afford evidence of his guilt of, or guilty participation in, any offence charged in the complaint, and to take possession of such documents, articles or property;
 - (d) to grant any other order of court or warrant or interim order of court of warrant which may be competent in the circumstances.
- (2) The power under the foregoing subsection [F28] of a judge—
 - (a) to pronounce an order of court assigning a diet for the disposal of the case may be exercised on his behalf by the clerk of court;

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(b)]

to grant a warrant to apprehend the accused shall be exercisable notwithstanding that there is power whether at common law or under any Act to apprehend him without a warrant.

- (3) Where a diet has been fixed in a summary prosecution, it shall be competent for the court, on a joint application in writing by the parties or their solicitors, to discharge the diet so fixed and fix in lieu thereof an earlier . . . ^{F29} diet.
- [^{F30}(4) Where the prosecutor and the accused make joint application to the court (orally or in writing) for postponement of a diet which has been fixed, the court shall discharge the diet and fix in lieu thereof a later diet unless the court considers that it should not do so because there has been unnecessary delay on the part of one or more of the parties.
- (5) Where the prosecutor has intimated to the accused that he desires to postpone or accelerate a diet which has been fixed, and the accused refuses, or any of the accused refuse, to make a joint application to the court for that purpose, the prosecutor may make an incidental application for that purpose under section 310 of this Act; and, after giving the parties an opportunity to be heard, the court may discharge the diet and fix in lieu thereof a later diet or, as the case may be, an earlier diet.
- (6) Where an accused has intimated to the prosecutor and to all the other accused that he desires such postponement or acceleration and the prosecutor refuses, or any of the other accused refuse, to make a joint application to the court for that purpose, the accused who has so intimated may apply to the court for that purpose; and, after giving the parties an opportunity to be heard, the court may discharge the diet and fix in lieu thereof a later diet or, as the case may be, an earlier diet.]

Textual Amendments

- F28** Words inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [s. 11\(a\)](#)
- F29** Words in [s. 134](#) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117\(1\)](#), [Sch. 6 Pt. I para. 47\(b\)](#); [S.I. 1996/517, arts. 3\(2\), 4-6](#), [Sch. 2](#)
- F30** [S. 314\(4\)–\(6\)](#) added by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [s. 11\(c\)](#)

315 Citation.

- (1) This Act shall be a sufficient warrant for the citation of the accused and witnesses in a summary prosecution to any ordinary sitting of the court or to any special diet fixed by the court or any adjournment thereof.
- (2) Such citation shall be in the form, as nearly as may be, of the appropriate form contained in Part IV of Schedule 2 to the ^{M7}Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournment under this Act and shall in the case of the accused proceed on an induciae of at least 48 hours unless in the special circumstances of the case the court fixes a shorter induciae.
- (3) The foregoing provisions of this section as to the citation of witnesses shall apply to the citation of witnesses for precognition by the prosecutor where a judge on the application of such prosecutor shall deem it expedient to grant warrant to cite witnesses for precognition in regard to any offence which may be competently tried in the court

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of that judge, and whether or not any person has at the time of such application been charged with such offence.

Modifications etc. (not altering text)

C8 S. 315 extended by Road Traffic Offenders Act 1988 (c. 53, SIF 107:1), s. 60(4)

Marginal Citations

M7 1954 c. 48(39:1).

316 Manner of citation.

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

Provided that, if the accused shall fail to appear at a diet or sitting or adjourned diet or sitting to which he has been cited in the manner provided by this subsection, paragraphs (b) and (c) of section 338 of this Act shall not apply unless it shall have been proved to the court that he received the citation or that the contents thereof came to his knowledge.

- (4) The production in court of any letter or other communication purporting to be written by or on behalf of an accused who has been cited in the manner provided in subsection (3) hereof in such terms as to infer that the contents of such citation came to his knowledge, shall be admissible as evidence of that fact for the purposes of the proviso to that subsection.

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317 Citation of probationer.

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

318 Citation of offender.

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

Provided that the citation shall be signed by the clerk of the court before which the offender is required to appear, instead of by the prosecutor, and provided also that the forms contained in Part IV of Schedule 2 to the ^{M8}Summary Jurisdiction (Scotland) Act 1954 and the corresponding forms contained in an Act of Adjournal under this Act shall not apply to such citation.

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

Marginal Citations

M8 1954 c. 48(39:1).

319 Citation by post.

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

320 Apprehension of witness.

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

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Modifications etc. (not altering text)

- C9** S. 320 applied (10.6.1991) by Criminal Justice (International Co-operation) Act 1990 (c. 5, SIF 39:1), s. 4(6), **Sch. 1 para. 2**; S.I. 1991/1072, **art. 2(a)**, Sch. Pt. I

321 Warrants of apprehension and search.

- (1) A warrant of apprehension or search may be in the form, as nearly as may be, of the appropriate form contained in Part IV of Schedule 2 to the ^{M9}Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act, and any warrant of apprehension or search shall, where it is necessary for its execution, imply warrant to officers of law to break open shut and lockfast places.
- (2) A warrant of apprehension of an accused person in such form as aforesaid shall imply warrant to officers of law to search for and to apprehend the accused, and to bring him before the court issuing the warrant, or before any other court competent to deal with the case, to answer to the charge on which such warrant is granted, and, in the meantime, until he can be so brought to detain him in a police station house, police cell, or other convenient place.
- (3) A person apprehended under any such warrant as aforesaid or by virtue of the powers possessed at common law, or conferred by statute, shall wherever practicable be brought before a court competent to deal with the case either by way of trial or by way of remit to another court not later than in the course of the first . . . ^{F31} day after such person shall be taken into custody, such day not being a [^{F32}Saturday, a Sunday or a court holiday prescribed for that court under section 10 of the ^{M10}Bail etc. (Scotland) Act 1980:]
 [^{F32}Provided that nothing in this subsection shall prevent such person being brought before the court on a Saturday, a Sunday or such a court holiday where the court is, in pursuance of the said section 10, sitting on such day for the disposal of criminal business.]
- (4) A warrant of apprehension or other warrant shall not be required for the purpose of bringing before the court an accused person who had been apprehended without a written warrant or who attends without apprehension in answer to any charge made against him.
- (5) A warrant of apprehension of a witness in the appropriate form shall imply warrant to officers of law to search for and apprehend the witness, and to detain him in a police station house, police cell, or other convenient place, until the date fixed for the hearing of the case, unless sufficient security be found to the amount fixed in the warrant for the appearance of such witness at all diets of court.

Textual Amendments

- F31** Word repealed by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 2**
F32 Words substituted by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 1 para. 7**

Modifications etc. (not altering text)

- C10** S. 321(3) excluded (*temp.* to 22.3.1991) by Prevention of Terrorism (Temporary Provisions) Act 1989 (c. 4, SIF 39:2), s. 15(7)(a) and S.I. 1990/683, **art. 3**

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Marginal Citations

M9 1954 c. 48(39:1).

M10 1980 c. 4(39:1).

322 Warrants for arrest of escaped prisoners and mental patients.

- (1) On an application being made to a sheriff or justice alleging that any person is—
- an offender unlawfully at large from a prison or other institution to which the Prison Act applies in which he is required to be detained after being convicted of an offence; or
 - a convicted mental patient liable to be retaken under [F33 section 18, 38(7) or 138 of the M11 Mental Health Act 1983], [F34 section 28, 44 or 121 of the M12 Mental Health (Scotland) Act 1984] or section 30 or 108 of the M13 Mental Health Act (Northern Ireland) 1961 (retaking of mental patients who are absent without leave or have escaped from custody);
- the sheriff or justice may issue a warrant to arrest him and bring him before any sheriff.
- (2) Where a person is brought before a sheriff in pursuance of a warrant for his arrest under this section, the sheriff shall, if satisfied that he is the person named in the warrant and if satisfied as to the facts mentioned in paragraph (a) or (b) of the foregoing subsection, order him to be returned to the prison or other institution where he is required or liable to be detained or, in the case of a convicted mental patient, order him to be kept in custody or detained in a place of safety pending his admission to hospital.
- (3) [F35 Section 137 of the M14 Mental Health Act 1983], [F36 section 120 of the M15 Mental Health (Scotland) Act 1984] and section 107 of the M16 Mental Health Act (Northern Ireland) 1961 (custody, conveyance and detention of certain mental patients) shall apply to a convicted mental patient required by this section to be conveyed to any place or to be kept in custody or detained in a place of safety as they apply to a person required by or by virtue of [F35 the said Act of 1983], [F36 1984] or 1961, as the case may be, to be so conveyed, kept or detained.
- (4) In this section—
- “convicted mental patient” means a person liable after being convicted of an offence to be detained under [F37 Part III of the M17 Mental Health Act 1983, [F38 Part VI of the M18 Mental Health (Scotland) Act 1984]], Part III of the M19 Mental Health Act (Northern Ireland) 1961 or section 330, 376, 378 or 379 of this Act in pursuance of a hospital order or transfer direction together with an order or direction restricting his discharge [F39 or a person liable to be detained under] [F37 section 38 to the said Act of 1983];
- “place of safety” has the same meaning as in [F37 Part II of the said Act of 1983], or Part III of the said Act of 1961, or section 462 of this Act as the case may be;
- “Prison Act” means the M20 Prison Act 1952, the M21 Prisons (Scotland) Act 1952 or the M22 Prison Act (Northern Ireland) 1953, as the case may be.

Textual Amendments

F33 Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), s. 148, [Sch. 4 para. 41\(a\)](#)

F34 Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(1), [Sch. 3 para. 30\(a\)](#)

F35 Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), s. 148, [Sch. 4 para. 41\(b\)](#)

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- F36** Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), **Sch. 3 para. 30(b)**
F37 Words substituted by Mental Health Act 1983 (c. 20, SIF 85), s. 148, **Sch. 4 para. 41(c)**
F38 Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), **Sch. 3 para. 30(c)**
F39 Words inserted by Mental Health (Amendment) Act 1982 (c. 51, SIF 85), Sch. 3 para. 51(b), **Sch. 5 para. 1**

Marginal Citations

- M11** 1983 c. 20(85).
M12 1984 c. 36(85).
M13 1961 c. 15 (N.I.)
M14 1983 c. 20(85).
M15 1984 c. 36(85).
M16 1961 c. 15 (N.I.)
M17 1983 c. 20(85).
M18 1984 c. 36(85).
M19 1961 c. 15 (N.I.)
M20 1952 c. 52(39:1).
M21 1952 c. 61(39:1).
M22 1953 c. 18 (N.I.)

323 Warrant to search for or remove a child.

- (1) If, on an application to a justice by any person who, in the opinion of the justice, is acting in the interests of a child, it appears to the justice on information on oath that there is reasonable cause to suspect—
- (a) that the child has been or is being assaulted, ill-treated, or neglected in any place within the jurisdiction of the justice, in a manner likely to cause him unnecessary suffering or injury to health, or
 - (b) that any offence mentioned in Schedule 1 to this Act has been or is being committed in respect of the child,
- the justice may issue a warrant authorising any constable named therein to search for the child and, if it is found that he has been or is being assaulted, ill-treated or neglected in manner aforesaid, or that any such offence as aforesaid has been or is being committed in respect of him, to take him to and detain him in a place of safety, or authorising any constable to remove him with or without search to a place of safety and detain him there.
- (2) A child shall not continue to be detained under the last foregoing subsection—
- (a) where the reporter considers the child does not require compulsory measures of care, or
 - (b) after the day on which a children's hearing first sit to consider his case in pursuance of section 37(4) of the ^{M23}Social Work (Scotland) Act 1968, or
 - (c) for a period exceeding seven days.
- (3) A justice issuing a warrant under this section may by the same warrant cause any person accused of any offence in respect of the child to be apprehended and brought before the sheriff, and proceedings to be taken against him according to law.
- (4) Any constable authorised by warrant under this section to search for or, with or without search, to remove any child may enter (if need be by force) any house, building, or other place specified in the warrant, and may remove him therefrom.

Status: Point in time view as at 03/02/1995.

Changes to legislation: Criminal Procedure (Scotland) Act 1975, Cross Heading: Procedure prior to trial is up to date with all changes known to be in force on or before 18 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (5) Every warrant issued under this section shall be addressed to and executed by a constable, who shall be accompanied by the person making the application if that person so desires, unless the justice by whom the warrant is issued otherwise directs, and may also, if the justice by whom the warrant is issued so directs, be accompanied by a duly qualified medical practitioner.
- (6) It shall not be necessary in any application, information or warrant under this section to name the child.

Modifications etc. (not altering text)

C11 S. 323 amended by Adoption (Scotland) Act 1978 (c. 28, SIF 49:11), ss. 37(1), and Foster Children (Scotland) Act 1984 (c. 56, SIF 20), s. 13

Marginal Citations

M23 1968 c. 49(81:3).

324 Backing of certain warrants from the Isle of Man.

- (1) A warrant issued in the Isle of Man for the arrest of a person charged with an offence may, after it has been endorsed by a justice in Scotland, be executed there by the person bringing that warrant, by any person to whom the warrant was originally directed or by any officer of law of the sheriff court district where the warrant has been endorsed as aforesaid in like manner as any such warrant issued in Scotland.
- (2) In this section “endorsed” means endorsed in the like manner as a process to which section 4 of the ^{M24}Summary Jurisdiction (Process) Act 1881 applies.

Marginal Citations

M24 1881 c. 24(36:3, 82).

325 ^{F40}

Textual Amendments

F40 S. 325 repealed by Criminal Law Act 1977 (c. 45, SIF 39:1), Sch. 13

326 Service of complaints, etc.

- (1) Any complaint, warrant, or other proceeding under this Part of this Act may without endorsement be served or executed at any place within Scotland by any officer of law, and such service or execution may be proved either by the oath in court of such officer or by production of his written execution. The ^{M25}Indictable Offences Act 1848 and the ^{M26}Indictable Offences Act Amendment Act 1868 shall, for the purpose of this Part of this Act, apply to all offences which may be tried by the court issuing any competent warrant, order of court, or other process.
- (2) ^{F41}

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Textual Amendments

F41 S. 326(2) repealed by Magistrates' Courts Act 1980 (c. 43, SIF 82), s. 154(3), **Sch. 9**

Marginal Citations

M25 1848 c. 42(39:1).

M26 1868 c. 107(39:1).

327 Sheriff's warrant may be executed out of district.

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

^{F42}328 Adjournment for inquiry, etc.

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Textual Amendments

F42 S. 328 repealed (18.9.1993) by 1993 c. 9, ss. 38(2), 47(3), **Sch. 7 Pt.I** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), **Sch. 2**

329 Remand and committal of persons under 21.

- (1) Where a court remands or commits for trial or for sentence a person under 21 years of age who is charged with or convicted of an offence and is not released on bail [^{F43}or ordained to appear], then, except as otherwise expressly provided by this section, the following provisions shall have effect, that is to say—
- (a) subject to the following paragraph, if he is under 16 years of age the court shall commit him to the local authority in whose area the court is situated, and the authority shall have the duty of placing him in a suitable place of safety chosen by the authority instead of committing him to prison;
 - (b) if he is a person of over 16 years of age, or a child under 16 years of age but over 14 years of age who is certified by the court to be unruly or depraved, and the court has been notified by the Secretary of State that a remand centre is available for the reception from that court of persons of his class or description, he shall be committed to a remand centre instead of being committed to prison.
- (2) Where any person is committed to a local authority or to a remand centre under any provision of this Act, that authority or centre shall be specified in the warrant, and

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he shall be detained by the authority or in the centre for the period for which he is committed or until he is liberated in due course of law.

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

Textual Amendments

F43 Words inserted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a), 62(2)**

Commencement Information

I1 [S. 329](#) wholly in force at 6.1.1992 see [s. 464\(3\)](#) and [S.I. 1991/2883](#), **art. 2**

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

- (1) Where a court remands or commits for trial a person charged with any offence who appears to the court to be suffering from mental disorder, and the court is satisfied that a hospital is available for his admission and suitable for his detention, the court may, instead of remanding him in custody, commit him to that hospital.
- (2) Where any person is committed to a hospital as aforesaid, the Hospital shall be specified in the warrant and, if the responsible medical officer is satisfied that he is suffering from mental disorder of a nature or degree which warrants his admission to a hospital under [^{F44}Part V of the ^{M27}Mental Health (Scotland) Act 1984], he shall there be detained for the period for which he is remanded or the period of committal, unless before the expiration of that period he is liberated in due course of law.
- (3) When the responsible medical officer has examined the person so detained he shall report the result of that examination to the court and, where the report is to the effect that the person is not suffering from mental disorder of such a nature or degree as aforesaid, the court may commit him to any prison or other institution to which he might have been committed had he not been committed to hospital or may otherwise deal with him according to law.
- (4) No person shall be committed to a hospital under this section except on the written or oral evidence of a medical practitioner.

Textual Amendments

F44 Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), [s. 127\(1\)](#), **Sch. 3 para. 31**

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Marginal Citations

M27 1984 c. 36(85).

331 Statutory offences time-limit.

- (1) Proceedings under this Part of this Act in respect of the contravention of any statute or order shall, unless the statute or order under which the proceedings are brought fixes any other period, be commenced within six months after the contravention occurred and, in the case of a continuous contravention, within six months after the last date of such contravention, and it shall be competent in such case in any prosecution to include the entire period during which the contravention has occurred.
- (2) A person shall not be summarily convicted of an offence mentioned in [F45 paragraph (d) of] Schedule 1 to this Act unless the offence was wholly or partly committed within six months before the proceedings against him in respect of the offence were commenced; but, subject as aforesaid, evidence may be taken of acts constituting, or contributing to, the offence and committed at any previous time.
- (3) For the purposes of this section proceedings shall be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted, if such warrant is executed without undue delay.

Textual Amendments

F45 Words inserted by Incest and Related Offences (Scotland) Act 1986 (c. 36, SIF 39:5), s. 3(2), **Sch. 1 para. 2**

Modifications etc. (not altering text)

- C12 S. 331 excluded by Food and Drugs (Scotland) Act 1956 (c. 30, SIF 53:2), s. 41(4); Wireless Telegraphy Act 1967 (c. 72, SIF 96), s. 5(4); Social Security Act 1975 (c. 14, SIF 113:1), s. 147(4); S.I. 1978/463, reg. 17; Ancient Monuments and Archaeological Areas Act 1979 (c. 46, SIF 3), s. 59; Solicitors (Scotland) Act 1980 (c. 46, SIF 76:2), s. 63(2); Insurance Companies Act 1982 (c. 50, SIF 67), s. 94(4)(5); Industrial Development Act 1982 (c. 52, SIF 64), s. 5, **Sch. 1 para. 4(2)**; Road Traffic Regulation Act 1984 (c. 27, SIF 107:1), ss. 110(2), 145(5), **Sch. 12 para. 8(2)**, and Companies Act 1985 (c. 6, SIF 27), s. 731(3); excluded by Animals (Scientific Procedures) Act 1986 (c. 14 SIF 4:5), ss. 30(3), 26(4); excluded by Insolvency Act 1986 (c. 45, SIF 66), ss. 431(3), 443; excluded by Legal Aid (Scotland) Act 1986 (c. 47, SIF 77:2), ss. 35(2), 46(2); excluded by Social Security Act 1986 (c. 50, SIF 113:1), s. 56(5)(a)
- C13 S. 331 excluded by Banking Act 1987 (c. 22, SIF 10), s. 97(3)
- C14 S. 331 excluded by S.I. 1990/1786, art. 8(7) (as replaced by S.I. 1990/2144, art. 3)
- C15 S. 331 excluded (1.1.1992) by S.I. 1991/2779, reg. 3(2)
S. 331 excluded (1.7.1992) by Social Security Administration Act 1992 (c. 5), ss. 116(7)(a), 192(4).
- C16 S. 331 excluded (15.4.1992) by S.I. 1992/973, art. 4(3)(a).
S. 331 excluded (15.4.1992) by S.I. 1992/975, art. 16(8).
- C17 S. 331 excluded (5.6.1992) by S.I. 1992/1302, art. 17(8).
S. 331 excluded (5.6.1992) by S.I. 1992/1304, art. 5(3)(a).
S. 331 excluded (28.10.1992) by S.I. 1992/2372, reg. 90.
- C18 S. 331 excluded (1.5.1993) by S.I. 1993/1188, art. 16(7)
- C19 S. 331 excluded (24.5.1993) by S.I. 1993/1244, art. 22(9)
- C20 S. 331 excluded (22.7.1993) by S.I. 1993/1784, art. 13(8)
- C21 S. 331 excluded (22.7.1993) by S.I. 1993/1787, art. 10(8)
- C22 S. 331 excluded (1.10.1993) by S.I. 1993/2355, art. 12(8)

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- C23** S. 331 excluded (1.12.1993) by S.I. 1993/2807, **art. 19(8)**
- C24** S. 331 excluded (23.5.1994) by S.I. 1994/1323, **art. 17(8)**
S. 331 excluded (1.9.1994) by 1994 c. 22, **ss. 48(4), 66(1)** (with s. 57(4))
S. 331 excluded (20.9.1995) by 1995 c. 32, **s. 9**; S.I. 1995/2472, **art. 2**
S. 331 excluded (19.10.1994) by S.I. 1994/2673, **art. 13(8)**
S. 331 excluded (31.10.1994) by 1994 c. 26, **s. 96(1)**; S.I. 1994/2550, **art. 2**
- C25** S. 331(1) modified by Surrogacy Arrangements Act 1985 (c. 39, SIF 39:2), **s. 4(6)**
- C26** S. 331(1) modified by Road Traffic Offenders Act 1988 (c. 53, SIF 107:1), **s. 64(7)(b)**
- C27** S. 331(1) applied (1.2.1993) by Friendly Societies Act 1992 (c. 40), **s. 107(5)**(with ss. 7(5), 93(4)); S.I. 1993/16, **art. 2, Sch.3**
- C28** S. 331(3) applied by International Carriage of Perishable Foodstuffs Act 1976 (c. 58, SIF 126), **s. 12(2)**; Marriage (Scotland) Act 1977 (c. 15, SIF 49:2), **s. 24(3)**; Insurance Companies Act 1982 (c. 50, SIF 67), **s. 94(5)**; Industrial Development Act 1982 (c. 52 SIF 64), Sch. 1 para. 4(2); Road Traffic Regulation Act 1984 (c. 27, SIF 107:1), **s. 110(2)**; Bankruptcy (Scotland) Act 1985 (c. 66, SIF 11:2), **s. 68(2)**; applied by Animals (Scientific Procedures) Act 1986 (c. 14, SIF 4:5), **ss. 30(3), 26(4)**; applied by Insolvency Act 1986 (c. 45, SIF 66), **ss. 431(3), 443**; by Social Security Act 1986 (c. 50, SIF 113:1), **s. 56(5)(b)**; Building Societies Act 1986 (c. 53, SIF 15), **s. 111(5)**
- C29** S. 331(3) applied by Sexual Offences (Scotland) Act 1976 (c. 67, SIF 39:5), **s. 2D(3)**
- C30** S. 331(3) applied by Road Traffic Offenders Act 1988 (c. 53, SIF 107:1), **s. 6(5)**
- C31** S. 331(3) applied by Computer Misuse Act 1990 (c. 18, SIF 39:1), **s. 13(7)**
- C32** S. 331(3) applied (1.7.1992) by Social Security Administration Act 1992 (c. 5), **ss. 116(7)(b)(ii), 192(4)**.
S. 331(3) applied (12.10.1992) by Timeshare Act 1992 (c. 35), **s. 11(3)**; S.I. 1992/1941, **art. 2**.
S. 331(3) applied (1.1.1993) by S.I. 1992/2992, **reg. 14(5)**.
S. 331(3) applied (1.1.1993) by S.I. 1992/2993, **reg. 12(5)**.
S. 331(3) applied (1.1.1993) by S.I. 1992/2994, **reg. 12(5)**.
- C33** S. 331(3) applied (10.6.1993) by S.I. 1993/1317, **reg. 8(9)**
- C34** S. 331(3) applied (30.6.1993) by S.I. 1993/1441, **reg. 11(5)**
- C35** S. 331(3) applied (30.8.1993) by 1992 c. 52, **s. 45A(6)(b)** (as inserted by 1993 c. 19, **s. 11(2)**); S.I. 1993/1908, **art. 2(1), Sch.1**
- C36** S. 331(3) applied (1.8.1993) by S.I. 1993/1734, **reg. 17(5)**
- C37** S. 331(3) applied (27.9.1993) by 1993 c. 37, **ss. 52(5), 65(2)**
- C38** S. 331(3) applied (15.11.1993) by S.I. 1993/2631, **reg. 14(5)**
- C39** S. 331(3) applied (24.12.1993) by 1993 c. 43, **s. 148(5)**; S.I. 1993/3237, **art. 2(1)**
- C40** S. 331(3) applied (18.4.1994) by S.I. 1994/947, **reg. 16(8)**
S. 331(3) applied (12.9.1994) by S.I. 1994/2155, **reg. 11(7)**
S. 331(3) applied (3.10.1994) by S.I. 1994/2328, **reg. 16(3)**
S. 331(3) extended (15.11.1994) by S.I. 1994/2740, **reg. 15(5)**
S. 331(3) applied (20.2.1995) by S.I. 1995/184, **reg. 5(7)**
S. 331(3) applied (10.5.1995) by S.I. 1995/1054, **reg. 15(3)(d)**
S. 331(3) applied (22.6.1995) by S.I. 1995/1576, **reg. 15(6)**
S. 331(3) applied (31.7.1995) by S.I. 1995/1738, **reg. 17(8)**

[^{F46}331A] Prevention of delay in trials.

- (1) Subject to subsections (2) and (3) below, a person charged with a summary offence shall not be detained in that respect for a total of more than forty days after the bringing of the complaint in court unless his trial is commenced within that period, failing which he shall be liberated forthwith and thereafter he shall be for ever free from all question or process for that offence.

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- (2) The sheriff may, on application made to him for the purpose, extend the period mentioned in subsection (1) above and order the accused to be detained awaiting trial for such period as he thinks fit where he is satisfied that delay in the commencement of the trial is due to—
 - (a) the illness of the accused or of a judge;
 - (b) the absence or illness of any necessary witness; or
 - (c) any other sufficient cause which is not attributable to any fault on the part of the prosecutor.
- (3) The grant or refusal of any application to extend the period mentioned in subsection (1) above may be appealed against by note of appeal presented to the High Court; and that Court may affirm, reverse or amend the determination made on such application.
- (4) For the purposes of this section, a trial shall be taken to commence when the first witness is sworn.]

Textual Amendments

F46 S. 331A inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 14(2), [Sch. 6 para. 1](#)

331B Death, illness or absence of judge.

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

332 Power to recover penalties.

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

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333 Offences by companies, etc.

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

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

[333A ^{F48}Adjournment for inquiry at first calling.

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

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

Textual Amendments

F48 S. 333A inserted (18.9.1993) by 1993 c. 9, s. 38(1) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), Sch. 2

333B Agreement of evidence.

- (1) Subject to subsection (2) below, the prosecutor and the accused (or each accused if more than one) shall each identify any facts which are facts—
 - (a) which he would, apart from this section, be seeking to prove;
 - (b) which he considers unlikely to be disputed by the other party (or by any of the other parties); and
 - (c) in proof of which he does not wish to lead oral evidence,

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and shall (without prejudice to section 16 of the Criminal Justice (Scotland) Act 1995 (procedure for proving uncontroversial evidence)) take all reasonable steps to secure the agreement of the other party (or each of the other parties) to them; and the other party (or each of the other parties) shall take all reasonable steps to reach such agreement.

- (2) Subsection (1) above shall not apply in relation to proceedings as respects which the accused (or any of the accused if more than one) is not legally represented.
- (3) The duty under subsection (1) above applies from the date on which the accused pleads not guilty until the swearing of the first witness or, where the accused tenders a plea of guilty at any time before the first witness is sworn, the date when he does so.

Status:

Point in time view as at 03/02/1995.

Changes to legislation:

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