



# Criminal Justice (Scotland) Act 1949

## 1949 CHAPTER 94

An Act to amend the law of Scotland relating to the probation of offenders, and the powers of courts under the Children and Young Persons (Scotland) Act, 1937; to abolish certain punishments and obsolete sanctions, and otherwise to reform existing methods and provide new methods of dealing with offenders; to alter the law relating to the proceedings of criminal courts in Scotland; to amend the False Oaths (Scotland) Act, 1933 to regulate the management of prisons and other institutions in Scotland and the treatment of offenders and other persons committed to custody; to make certain consequential amendments to the Criminal Justice Act, 1948; and for purposes connected with the aforesaid matters. [16th December 1949.]

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### POWERS AND PROCEEDINGS OF COURTS

##### *Discharge*

#### **1 Absolute discharge**

Where—

- (a) a person is convicted on indictment of an offence (other than an offence the sentence for which is fixed by law); or
- (b) a person is charged before a court of summary jurisdiction with an offence (other than an offence the sentence for which is fixed by law) and the court is satisfied that he committed the offence,

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the court, if it is of opinion, having regard to the circumstances, including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate may, instead of sentencing him, and, in the case of a court of summary jurisdiction without proceeding to conviction, make an order discharging him absolutely.

### *Probation*

## **2 Probation**

(1) Where—

- (a) a person is convicted on indictment of an offence (other than an offence the sentence for which is fixed by law), or
- (b) a person is charged before a court of summary jurisdiction with an offence (other than an offence the sentence for which is fixed by law) and the court is satisfied that he committed the offence,

the court, if it is of opinion, having regard to the circumstances, including the nature of the offence and the character of the offender, that it is expedient to do so, may, instead of sentencing him, and, in the case of a court of summary jurisdiction without proceeding to conviction, make a probation order, that is to say an order requiring the offender to be under supervision for a period to be specified in the order of not less than one nor more than three years.

(2) A probation order shall be in the form as nearly as may be of the First Schedule to this Act and shall name the probation area in which the offender resides or is to reside, and the court making the order shall nominate a salaried or a voluntary probation officer, or a salaried and a voluntary probation officer to act jointly:

Provided that where the offender resides or is to reside in a probation area in which the court has no jurisdiction, the court, in lieu of nominating a probation officer or officers, shall name the appropriate court, being such a court as could have been named in any amendment of the order in accordance with the provisions of the Second Schedule to this Act, and that court shall nominate the probation officer or officers.

- (3) Any salaried probation officer nominated in pursuance of the last foregoing subsection shall be selected from among the salaried probation officers for the area named in the probation order.
- (4) Subject to the provisions of the Second Schedule to this Act relating to probationers who change their residence, an offender in respect of whom a probation order is made shall be required to be under the supervision of the probation officer or officers nominated as aforesaid.
- (5) Subject to the provisions of the next following section, a probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition by him of the offence or the commission of other offences.
- (6) Without prejudice to the generality of the last foregoing subsection, a probation order may include requirements relating to the residence of the offender:

Provided that—

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- (a) before making an order containing any such requirements, the court shall consider the home surroundings of the offender; and
  - (b) where the order requires the offender to reside in an approved probation hostel, an approved probation home or any other institution or place, the name of the institution or place and the period for which he is so required to reside shall be specified in the order, and that period shall not extend beyond twelve months from the date of the requirement or beyond the date when the order expires.
- (7) Before making a probation order, the court shall explain to the offender in ordinary language the effect of the order (including any additional requirements proposed to be inserted therein under subsection (5) or subsection (6) of this section or under the next following section) and that if he fails to comply therewith or commits another offence during the probation period he will be liable to be convicted of and sentenced for the original offence or, if that offence was tried on indictment, to be sentenced therefor, and the court shall not make the order unless the offender expresses his willingness to comply with the requirements thereof.
- (8) The clerk of the court by which a probation order is made or of the appropriate court, as the case may be, shall cause copies thereof to be given to the probation officer or officers nominated in pursuance of subsection (2) of this section, to the probationer, to the probation committee for the probation area in which the probationer resides or is to reside and to the person in charge of any institution or place in which the probationer is required by the order to reside.
- (9) Where a probation order requires the probationer to reside in any institution or other place, not being—
- (a) an approved probation hostel or approved probation home; or
  - (b) an institution in which he is required to reside for the purposes of any such treatment as is mentioned in paragraph (a) or paragraph (b) of subsection (2) of the next following section,
- the court shall forthwith give notice of the terms of the order to the Secretary of State.

### **3 Probation orders requiring treatment for mental condition**

- (1) Where the court is satisfied, on the evidence of a registered medical practitioner appearing to the court to be experienced in the diagnosis of mental disorders, that the mental condition of an offender is such as requires and as may be susceptible to treatment but is not such as to justify his being certified as a lunatic under the Lunacy (Scotland) Act, 1862, or as a defective under the Mental Deficiency and Lunacy (Scotland) Act, 1913, the court may, if it makes a probation order, include therein a requirement that the offender shall submit, for such period not extending beyond twelve months from the date of the requirement as may be specified therein, to treatment by or under the direction of a registered medical practitioner with a view to the improvement of the offender's mental condition.
- (2) The treatment required by any such order shall be such one of the following kinds of treatment as may be specified in the order, that is to say—
- (a) treatment as a voluntary boarder under section fifteen of the Lunacy (Scotland) Act, 1866;
  - (b) treatment as a resident patient in such institution or place approved for the purposes of this section by the Secretary of State as may be specified in the order;

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- (c) treatment as a non-resident patient at such institution or place as may be specified in the order; or
- (d) treatment by or under the direction of such registered medical practitioner as may be specified in the order;

but except as aforesaid the nature of the treatment shall not be specified in the order.

- (3) A court shall not make a probation order containing such a requirement as aforesaid unless it is satisfied that arrangements have been or can be made for the treatment intended to be specified in the order, and, if the offender is to be treated as a voluntary boarder or as a resident patient, for his reception.
- (4) While the probationer is under treatment as a voluntary boarder or as a resident patient in pursuance of a requirement of the probation order, the probation officer or officers responsible for his supervision shall carry out the supervision to such extent only as may be necessary for the purpose of the discharge or amendment of the order.
- (5) Where the medical practitioner by whom or under whose direction a probationer is being treated for his mental condition in pursuance of a probation order is of opinion that part of the treatment can be better or more conveniently given in or at an institution or place not specified in the order, being an institution or place in or at which the treatment of the probationer will be given by or under the direction of a registered medical practitioner, he may, with the consent of the probationer, make arrangements for him to be treated accordingly; and the arrangements may provide for the probationer to receive part of his treatment as a resident patient in an institution or place notwithstanding that the institution or place is not one which could have been specified in that behalf in the probation order.
- (6) Where any such arrangements as are mentioned in the last foregoing subsection are made for the treatment of a probationer—
  - (a) the medical practitioner by whom the arrangements are made shall give notice in writing to the probation officer or officers responsible for the supervision of the probationer, specifying the institution or place in or at which the treatment is to be carried out; and
  - (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the probation order.
- (7) For the purposes of subsection (1) of this section, and subject as hereinafter provided, a report in writing as to the mental condition of an offender purporting to be signed by a registered medical practitioner experienced in the diagnosis of mental disorders may be received in evidence without proof of the signature, qualifications or experience of the practitioner and shall be deemed to apply to such offender:

Provided that such a report shall not be so received unless the offender consents or, where he is under seventeen years of age, unless his parent or guardian consents or, if no parent or guardian can be found, unless he himself or his counsel or solicitor consents.

- (8) Where a person of whose mental condition evidence is received for the purposes of subsection (1) of this section (or, where that person is under seventeen years of age, his parent or guardian or, if no parent or guardian can be found, he or his counsel or solicitor) desires to call rebutting evidence, the court shall not make a probation order in his case containing any such requirement as is authorised by this section unless he, or his parent or guardian, or his counsel or solicitor, as the case may be, has been afforded an opportunity of calling such evidence.

- (9) Except as provided by this section, a court shall not make a probation order requiring a probationer to submit to treatment for his mental condition.

#### **4 Discharge, amendment and review of probation orders**

- (1) The provisions of the Second Schedule to this Act shall have effect in relation to the discharge and amendment of probation orders.
- (2) Where a probation order, whether as originally made or amended under the said Schedule, requires the probationer to reside in an approved probation hostel or home or other institution or place (otherwise than for the purpose of submitting to treatment for his mental condition as a voluntary boarder or resident patient) for a period extending beyond six months from the date of the requirement, the probation officer shall, as soon as may be after the expiration of six months after that date, report on the case to the court by which the probation order was made or to the appropriate court.
- (3) On receipt of any such report, the court shall review the probation order for the purpose of considering whether to cancel the requirement as to residence or reduce the period thereof, and may, if it thinks fit, amend the order accordingly without the necessity for any application in that behalf.
- (4) Where, under the following provisions of this Part of this Act, a probationer is sentenced for the offence for which he was placed on probation, the probation order shall cease to have effect.

#### **5 Failure to comply with requirement of probation orders**

- (1) If on information on oath from the probation officer named in a probation order it appears to the court by which the order was made or to the appropriate court that the probationer has failed to comply with any of the requirements of the order, that court may issue a warrant for the arrest of the probationer, or may, if it thinks fit, instead of issuing such a warrant in the first instance, issue a citation requiring the probationer to appear before the court at such time as may be specified in the citation.
- (2) If it is proved to the satisfaction of the court before which a probationer appears or is brought in pursuance of the last foregoing subsection that he has failed to comply with any of the requirements of the probation order, the court may—
- (a) without prejudice to the continuance in force of the probation order, impose a fine not exceeding ten pounds; or
  - (b)
    - (i) where the probationer has been convicted for the offence for which the order was made, sentence him for that offence;
    - (ii) where the probationer has not been so convicted, convict him and sentence him as aforesaid; or
  - (c) vary any of the requirements of the probation order, so however that any extension of the probation period shall terminate not later than three years from the date of the probation order.
- (3) Where a court imposes a fine under this section, it shall, if the probationer is a child, and may, if the probationer is a young person, order that the fine be paid by the parent or guardian of the child or young person.
- (4) A fine imposed under this section in respect of a failure to comply with the requirements of a probation order shall be deemed for the purposes of any enactment

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to be a sum adjudged to be paid by or in respect of a conviction or a penalty imposed on a person summarily convicted.

- (5) A probationer who is required by a probation order to submit to treatment for his mental condition shall not be deemed for the purpose of this section to have failed to comply with that requirement on the ground only that he has refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances.
- (6) Without prejudice to the provisions of section six of this Act, a probationer who is convicted of an offence committed during the probation period shall not on that account be liable to be dealt with under this section for failing to comply with any requirement of the probation order.

## **6 Commission of further offence**

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

## **7 Probation orders relating to persons residing in England**

- (1) Where the court by which a probation order is made under section two of this Act is satisfied that the offender resides or will reside in England, subsection (2) of the said section shall not apply to the order, but the order shall contain a requirement that he be under the supervision of a probation officer appointed for or assigned to the petty sessional division in which the offender resides or will reside ; and that division shall be named in the order.
- (2) Where a probation order has been made under section two of this Act and the court in Scotland by which the order was made or the appropriate court is satisfied that the probationer proposes to reside or is residing in England, the power of that court to amend the order under the Second Schedule to this Act shall include power to omit therefrom the name of the probation officer named therein and to insert the provisions required by subsection (1) of this section ; and the court may so amend the order without summoning the probationer and without his consent.
- (3) Notwithstanding anything in the foregoing provisions of this Part of this Act an order as made or amended under this section shall not require the offender to reside in any institution, or to submit to treatment for his mental condition, but without prejudice

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to any power of a court in England to impose any such requirements under the next following subsection.

- (4) Subsections (1) to (3) of section four and subsection (1) of section five of this Act shall not apply to any order made or amended under this section ; but subject as hereinafter provided the provisions of the Criminal Justice Act, 1948 (except section eight of that Act) shall apply to the order as if it were a probation order made under section three of that Act:

Provided that in the application to any such order of section six of the said Act (which relates to breach of a requirement of a probation order) paragraph (a) of subsection (2), paragraph (a) of subsection (3) and paragraph (b) of subsection (4). of that section shall not apply, and paragraph (b) of subsection (3) and paragraph (a) of subsection (4) of that section shall have effect as if for references therein to a court of assize or quarter sessions and the court of assize or quarter sessions there were substituted references to a court in Scotland and to the court in Scotland by which the probation order was made or amended under this section.

- (5) If it appears on information to a justice acting for the petty sessional division or place for which the supervising court (as defined in the Criminal Justice Act, 1948) acts that a person in whose case a probation order has been made or amended under this section has been convicted by a court in any part of Great Britain of an offence committed during the period specified in the order, he may issue a summons requiring that person to appear, at the place and time specified therein, before the court in Scotland by which the probation order was made or, if the information is in writing and on oath, may issue a warrant for his arrest, directing that person to be brought before the last-mentioned court.
- (6) If a warrant for the arrest of a probationer issued under section six of this Act by a court is executed in England, and the probationer cannot forthwith be brought before that court, the warrant shall have effect as if it directed him to be brought before a court of summary jurisdiction for the place where he is arrested ; and the court of summary jurisdiction shall commit him to custody or release him on bail (with or without sureties) until he can be brought or appear before the court in Scotland.
- (7) The court by which a probation order is made or amended in accordance with the provisions of this section shall send three copies of the order to the clerk to the justices for the petty sessional division named therein, together with such documents and information relating to the case as it considers likely to be of assistance to the court acting for that petty sessional division.
- (8) Where a probation order which is amended under subsection (2) of this section is an order to which the provisions of this Act apply by virtue of section nine of the Criminal Justice Act, 1948 (which relates to probation orders under that Act relating to persons residing in Scotland) then, notwithstanding anything in that section or this section, the order shall, as from the date of the amendment, have effect in all respects as if it were an order made under section three of that Act in the case of a person residing in England.

## **8 Supplementary provisions as to probation**

- (1) Without prejudice to the provisions of subsection (2) of section fifty-nine of the Children and Young Persons (Scotland) Act, 1937 (which enables a court to order the parent or guardian of a child or young person to give security for his good behaviour) any court may, on making a probation order under this Part of this Act, if it thinks it

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expedient for the purpose of the reformation of the offender, require the offender, or if the offender is a child, his parent or guardian, or if the offender is a young person, the offender or his parent or guardian to give security for the good behaviour of the offender.

- (2) Security may be given under the last foregoing subsection by consignment with the clerk of the court or by entering into an undertaking to pay the amount, but not otherwise and such security may be forfeited and recovered in like manner as caution.

## **9 Effects of probation and absolute discharge**

- (1) Subject as hereinafter provided, a conviction on indictment of an offence for which an order is made under this Part of this Act placing the offender on probation or discharging him absolutely shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender for an offence of which the first mentioned offence constitutes an aggravation:

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

- (2) Without prejudice to the foregoing provisions of this section, the conviction of an offender who is placed on probation or discharged absolutely as aforesaid shall in any event be disregarded for the purposes of any enactment which imposes any disqualification or disability upon convicted persons, or authorises or requires the imposition of any such disqualification or disability.
- (3) The foregoing provisions of this section shall not affect—
- (a) any right of any such offender as aforesaid to appeal against his conviction; or
  - (b) the operation, in relation to any such offender, of any enactment in force at the commencement of this Act which is expressed to extend to persons dealt with under subsection (1) of section one of the Probation of Offenders Act, 1907, as well as to convicted persons.
- (4) Where an offender is placed on probation or discharged absolutely by a court of summary jurisdiction, he shall have the like right of appeal against the finding that he committed the offence as if that finding were a conviction.
- (5) Where a person charged with an offence has at any time previously been placed on probation or discharged absolutely in respect of the commission by him of an offence which constitutes an aggravation of the first mentioned offence, it shall be competent, in the proceedings for that offence, to bring before the court the probation order or order of absolute discharge in like manner as if the order were a conviction.

## **10 Reports of probation officers**

Where a report by a probation officer is made to any court (other than a juvenile court) with a view to assisting the court in determining the most suitable method of dealing with any person in respect of an offence, a copy of the report shall be given by the clerk of the court to the offender or his solicitor:



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

## **11 Probation areas, probation committees and probation officers**

The provisions of the Third Schedule to this Act shall have effect with respect to—

- (a) the constitution of probation areas, and of probation committees and of case committees for those areas;
- (b) the functions of probation committees and case committees ; and
- (c) the appointment, functions, remuneration and conditions of service of probation officers.

## **12 Approved probation hostels and homes**

- (1) The Secretary of State may approve premises for the reception of persons who may be required to reside therein by a probation order or a supervision order, and such premises shall be known—
  - (a) if the persons so residing are employed outside the premises, or are awaiting such employment, as " approved probation hostels " ;
  - (b) in any other case, as " approved probation homes " .
- (2) The Secretary of State may make rules for the regulation, management and inspection of approved probation hostels and of approved probation homes; and such rules may in particular provide that no person shall be appointed to be in charge of an approved probation hostel or home unless the Secretary of State has consented to his appointment :

Provided that the rules shall not prohibit the making of such an appointment in case of emergency without the previous consent of the Secretary of State, but may, in that case, require notice of the appointment to be given immediately to the Secretary of State, and enable him, if he thinks fit, to require the appointment to be terminated.

## **13 Inspection of institutions for residence of probationers**

- (1) Any institution, not being an approved probation hostel or an approved probation home, in which a person is required by a probation order or a supervision order to reside otherwise than for the purpose of his submitting to treatment for his mental condition as a voluntary boarder or resident patient shall, so long as he resides there, be subject to inspection by the Secretary of State unless it is, as a whole, otherwise subject to inspection by a Government department.
- (2) A person appointed by the Secretary of State to inspect any such institution as aforesaid shall have power to enter the institution and to make such investigation of the treatment of any persons residing there as he thinks fit; and any person who obstructs him in the exercise of the power aforesaid shall be liable on summary conviction to a fine not exceeding five pounds.

*Abolition of certain obsolete sanctions, penal servitude, and hard labour*

**14 Sentence for high treason**

The Treason Act, 1790, and the Treason Act, 1814, in so far as they enact that the sentence to be pronounced on conviction of high treason shall include the drawing of the person convicted on a hurdle to the place of execution, and, after execution, the severing of the head from the body, and the dividing of the body into four quarters, are hereby repealed.

**15 Abolition of escheat, etc.**

- (1) No sentence or conviction for any crime shall involve any attainder or corruption of blood or any escheat.
- (2) No person shall be sentenced by a court to outlawry or fugitation.

**16 Abolition of penal servitude and hard labour**

- (1) No person shall be sentenced by a court to penal servitude; and every enactment conferring power on a court to pass a sentence of penal servitude in any case shall be construed as conferring power to pass a sentence of imprisonment for a term not exceeding the maximum term of penal servitude for which a sentence could have been passed in that case immediately before the commencement of this Act:

Provided that nothing in this subsection shall be construed as empowering a court, other than the High Court, to pass a sentence of imprisonment for a term exceeding two years.

- (2) No person shall be sentenced by a court to imprisonment with hard labour; and every enactment conferring power on a court to pass a sentence of imprisonment with hard labour in any case shall be construed as conferring power to pass a sentence of imprisonment for a term not exceeding the term for which a sentence of imprisonment with hard labour could have been passed in that case immediately before the commencement of this Act; and so far as any enactment requires or permits prisoners to be kept to hard labour it shall cease to have effect.

*Powers relating to young offenders*

**17 Restriction on sentence of death**

The following subsection shall be substituted for subsection (1) of section fifty-seven of the Children and Young Persons (Scotland) Act, 1937:—

- “(1) Sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the court that at the time when the offence was committed he was under the age of eighteen years; but in lieu thereof the court shall sentence him to be detained during His Majesty's pleasure; and if so sentenced he shall be liable to be detained in such place and under such conditions as the Secretary of State may direct.”

## **18 Restriction on imprisonment**

- (1) No court shall impose imprisonment on a person under seventeen years of age.
- (2) No court shall impose imprisonment on a person under twenty-one years of age unless the court is of opinion that no other method of dealing with him is appropriate; and for the purpose of determining whether any other method of dealing with any such person is appropriate the court shall obtain from a probation officer or otherwise and consider information about his circumstances, and shall take into account any information before the court which is relevant to his character and his physical and mental condition.
- (3) Where a court of summary jurisdiction other than a sheriff court or a stipendiary magistrate's court imposes imprisonment on any such person as is mentioned in the last foregoing subsection, the court shall state the reason for its opinion that no other method of dealing with him is appropriate, and the reason shall be specified in the minutes required to be kept under section fifty-three of the Summary Jurisdiction (Scotland) Act, 1908.
- (4) His Majesty may by Order in Council prohibit courts from sentencing to imprisonment persons under the age of twenty-one years or such lower age as may be specified in the Order, and any such Order may be limited to particular classes of court or to persons of one of the sexes:

Provided that no Order in Council shall be made under this subsection until the Secretary of State is satisfied that the methods, other than imprisonment, available for the treatment of offenders afford to courts adequate means of dealing with the persons to whom the Order relates.

- (5) A draft of any Order in Council under this section shall be laid before Parliament, and the draft shall not be submitted to His Majesty in Council unless each House of Parliament presents an Address to His Majesty praying that the Order be made.

## **19 Detention in a detention centre**

- (1) Where a court has power, or would but for the last foregoing section have power, to impose imprisonment on a person who is not less than fourteen but under twenty-one years of age, the court, if it has been notified by the Secretary of State that a detention centre is available for the reception from that court of persons of his class or description, may in lieu of imposing imprisonment order him to be detained in a detention centre to be specified in the order for a term not exceeding three months:

Provided that if the maximum term of imprisonment which the court might, or might but for the last foregoing section, impose is less than three months, the term for which he is ordered to be detained as aforesaid shall be a term not exceeding, that maximum term of imprisonment.

- (2) A court shall not order a person to be detained in a detention centre—
  - (a) if he has been previously sentenced to imprisonment or Borstal training;
  - (b) if he is not less than seventeen years of age, and has previously been ordered to be so detained since attaining that age;

and shall not order any other person to be so detained unless the court has considered every other method (except imprisonment) by which the court might deal with him and is of opinion that none of those methods is appropriate.

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- (3) Where a person has been ordered to be detained in a detention centre in default of the payment of any sum of money then, on the payment of the whole or part of that sum, he shall be discharged, or, as the case may be, the term of his detention shall be reduced, in the same manner as if the term were a term of imprisonment.
- (4) A court shall not make an order that an offender who is not less than fourteen years of age be committed to custody in a remand home under section fifty-eight of the Children and Young Persons (Scotland) Act, 1937, if it has been notified by the Secretary of State that a detention centre is available for the reception from that court of persons of his class or description.

## **20 Borstal training**

- (1) Where a person who is not less than sixteen but under twenty-one years of age is convicted on indictment or is convicted summarily by a sheriff or a stipendiary magistrate of an offence punishable with imprisonment, and the court is satisfied having regard to his character and previous conduct, and to the circumstances of the offence, that it is expedient for his reformation and the prevention of crime that he should undergo a period of training in a Borstal institution, the court may, in lieu of any other sentence, pass a sentence of Borstal training.
- (2) A person sentenced to Borstal training shall be detained in a Borstal institution, and after his release therefrom be subject to supervision, in accordance with the provisions of the Fourth Schedule to this Act.
- (3) Before a sentence of Borstal training is passed the court shall call for and consider a report on the offender's physical and mental condition and his suitability for such a sentence, which report it shall be the duty of the Secretary of State to cause to be furnished to the court.
- (4) If on consideration of a report furnished in pursuance of the last foregoing subsection the court, either *ex proprio motu* or on the application of either party, thinks it expedient to do so, it may require any person concerned in the preparation of the report or with knowledge of matters dealt with in the report to appear with a view to his examination on oath regarding any of the matters dealt with in the report, and such person may be examined or cross-examined accordingly.
- (5) A copy of any report furnished under subsection (3) of this section shall be given by the clerk of the court to the offender or his solicitor at least two clear days before the diet at which the sentence is to be passed.

### *Powers relating to persistent offenders*

## **21 Corrective training and preventive detention**

- (1) Where a person who is not less than twenty-one years of age—
  - (a) is convicted on indictment of an offence punishable with imprisonment for a term of two years or more; and
  - (b) has been convicted on at least two previous occasions since he attained the age of seventeen of offences punishable on indictment with such a sentence,then, if the court is satisfied that it is expedient with a view to his reformation and the prevention of crime that he should receive training of a corrective character for a

substantial time, followed by a period of supervision if released in accordance with the provisions of the Fifth Schedule to this Act before the expiry of his sentence, the court may pass, in lieu of any other sentence, a sentence of corrective training for such term of not less than two nor more than four years as the court may determine.

- (2) Where a person who is not less than thirty years of age—
- (a) is convicted in the High Court of Justiciary of an offence punishable with imprisonment for a term of two years or more; and
  - (b) has been convicted on indictment on at least three previous occasions since he attained the age of seventeen of offences punishable with such a sentence and was on at least two of those occasions sentenced to Borstal training, imprisonment or corrective training;

then, if the Court is satisfied that it is expedient for the protection of the public that he should be detained in custody for a substantial time, followed by a period of supervision if released in accordance with the provisions of the Fifth Schedule to this Act before the expiry of his sentence, the Court may pass, in lieu of any other sentence, a sentence of preventive detention for such term of not less than five nor more than fourteen years as the Court may determine.

- (3) For the purposes of subsections (1) and (2) of this section, a certificate purporting to be signed by or on behalf of the Director of Public Prosecutions that an offence is punishable on indictment in England with imprisonment for a term of two years or more shall be sufficient evidence of the matter so certified.
- (4) A person sentenced to corrective training or preventive detention shall be detained in a prison for the term of his sentence subject to his release in accordance with rules made under subsection (6) of section fifty-three of this Act or the provisions of the Fifth Schedule to this Act, and while so detained shall be treated in such manner as may be prescribed by rules made under that section.
- (5) Before sentencing any offender to corrective training or preventive detention, the court shall call for and consider a report on the offender's physical and mental condition and his suitability for such a sentence, which report it shall be the duty of the Secretary of State to cause to be furnished to the court.
- (6) If on consideration of a report furnished in pursuance of the last foregoing subsection the court, either *ex proprio motu* or on the application of either party, thinks it expedient to do so, it may require any person concerned, in the preparation of the report or with knowledge of matters dealt with in the report to appear with a view to his examination on oath regarding any of the matters dealt with in the report, and such person may be examined or cross-examined accordingly.
- (7) A copy of any report furnished under subsection (5) of this section shall be given by the clerk of the court to the offender or his solicitor at least two clear days before the diet at which the sentence is to be passed.
- (8) For the purposes of paragraph (b) of subsection (2) of this section a person sentenced to Borstal training on summary conviction of an offence shall be deemed to have been convicted of that offence on indictment.

## **22 Power to order certain discharged prisoners to notify address**

- (1) Where a person is convicted on indictment of an offence punishable with imprisonment for a term of two years or more and that person—

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- (a) has been convicted on at least two previous occasions of offences for which he was sentenced to Borstal training or imprisonment; or
- (b) has been previously convicted of an offence for which he was sentenced to corrective training,

the court, if it sentences him to a term of imprisonment of twelve months or more, shall, unless having regard to the circumstances, including the character of the offender, it otherwise determines, order that he shall for a period of twelve months from his next discharge from prison be subject to the provisions of this section.

- (2) Where any such order as aforesaid has been made—
  - (a) the offender shall, on his next discharge from prison and thereafter from time to time, inform the appointed society of his address in accordance with such instructions as may be given to him by or on behalf of the society;
  - (b) if the offender fails to comply to the satisfaction of the appointed society with the aforesaid requirement to notify his address on his discharge, the society shall, and if he subsequently fails to keep the society informed of his address to their satisfaction, the society may, give notice of the failure to the Secretary of State, and shall if reasonably possible inform the offender that the notice has been given;

and as from the date on which any such notice has been given as aforesaid, the provisions of the Sixth Schedule to this Act shall apply to the offender.
- (3) It shall be the duty of the governor of a prison on the discharge from prison of an offender against whom an order has been made under this section to serve upon him a notice stating the effect of the order.
- (4) The Secretary of State may by a direction in writing relieve an offender against whom an order has been made under this section of any requirement of this section or of the Sixth Schedule to this Act; and any such direction may be made conditional upon the observance of such requirements as may be specified therein; and the Secretary of State may, if he is satisfied that any requirement so imposed has been contravened, cancel the direction.
- (5) In this section the expression " the appointed society " means a society appointed for the purposes of this section by the Secretary of State who may appoint a society either to act in all cases or to act in such cases or classes of cases as he may direct.

*Orders for the detention of persons who are of unsound mind or mentally defective*

## **23 Power to order the detention of persons of unsound mind**

- (1) Where it appears to the prosecutor in any court of summary jurisdiction before which a person is charged with an offence that the person is of unsound mind, it shall be the duty of such prosecutor to bring before the court such evidence as may be available of the mental condition of such person.
- (2) Where a person is charged summarily in the sheriff court with any act or omission constituting an offence punishable with imprisonment, and the court is satisfied that the person did the act or made the omission charged, and is satisfied on the evidence of two registered medical practitioners that the person is of unsound mind and is also satisfied that he is a proper person to be detained, the court shall—

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- (a) order that he be removed to and received and detained in such mental hospital as may be named in the order; or,
  - (b) if the court is satisfied on the evidence of two registered medical practitioners approved for the purpose by the General Board of Control for Scotland that the person by reason of his mental illness is in a state threatening danger to the lieges or offensive to public decency and cannot suitably be cared for in a mental hospital, order that he be removed to and received and detained in such State Mental Hospital as may be named in the order.
- (3) Where a sheriff is satisfied on the evidence of two registered medical practitioners approved for the purpose by the General Board of Control for Scotland that a person detained under an order made under paragraph (a) of the last foregoing subsection is in a state threatening danger to the lieges or offensive to public decency and cannot be suitably cared for in a mental hospital, the sheriff shall make an order that he be removed to and received and detained in such State Mental Hospital as may be named in the order, and the first-mentioned order shall cease to have effect.
- (4) An order made under paragraph (a) of subsection (2) of this section shall be of the like force and effect as an order made under section fourteen of the Lunacy (Scotland) Act, 1862, and an order made under paragraph (b) of the said subsection or under the last foregoing subsection shall be of the like force and effect as if it were an order made under section fifteen of that Act and as if any reference in that section to a mental hospital included a reference to a State Mental Hospital.
- (5) Where a person is charged before a court of summary jurisdiction other than a sheriff court with any act or omission constituting an offence punishable with imprisonment, the court, if it appears to it that such person may be of unsound mind, shall remit him to the sheriff court in the manner provided by section nine of the Summary Jurisdiction (Scotland) Act, 1908, and the sheriff court shall, on any such remit being made, have the like power with regard to such person as if he had been charged before that court with the said act or omission.
- (6) The court by which an order is made under this section shall send to the mental hospital or, as the case may be, the State Mental Hospital named in the order such information in the possession of the court as it considers likely to be of assistance in dealing with the person to whom the order relates.
- (7) The foregoing provisions of this section shall, until the day appointed for the coming into force of section sixty-three of this Act, have effect with the substitution for any reference to a State Mental Hospital of a reference to the lunatic department of Perth Prison.

## **24 Power to order the detention of mental defectives**

- (1) Where it appears to the prosecutor in any court before which a person is charged with an offence that the person is a defective within the meaning of the Mental Deficiency (Scotland) Acts, 1913 and 1940, it shall be the duty of such prosecutor to bring before the court such evidence as may be available of the mental condition of such accused person.
- (2) Where a person is convicted in the High Court of Justiciary or the sheriff court of any offence and the court is satisfied on the evidence of two registered medical practitioners one of whom shall be a medical practitioner approved for the purpose by the General Board of Control for Scotland that the person is a defective within the

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meaning of the Mental Deficiency (Scotland) Acts, 1913 and 1940, the court may (in lieu of dealing with him in any other manner) order that he be removed to and received and detained in such institution for mental defectives as may be named in the order or that he be placed under guardianship.

- (3) Where a person is charged before a court of summary jurisdiction, other than a sheriff court, with any offence, the court, if it appears to it that such person may be a defective within the meaning of the Mental Deficiency (Scotland) Acts, 1913 and 1940, shall remit him to the sheriff court in the manner provided by section nine of the Summary Jurisdiction (Scotland) Act, 1908, and the sheriff court shall, on any such remit being made, have the like power with regard to such person as if he had been charged before that court with the said offence.
- (4) The court by which an order is made under this section shall send to the institution named in the order such information in the possession of the court as it considers likely to be of assistance in dealing with the person to whom the order relates.
- (5) An order made under this section shall be of the like force and effect as a judicial order under the Mental Deficiency (Scotland) Acts, 1913 and 1940.
- (6) Section nine of the Mental Deficiency and Lunacy (Scotland) Act, 1913 shall, in so far as it relates to persons charged with offences, cease to have effect.

## **25 Change in procedure in the case of mental defectives undergoing imprisonment, etc.**

The following section shall be substituted for section ten of the Mental Deficiency and Lunacy (Scotland) Act, 1913:—

Where a sheriff on an application by the Secretary of State is satisfied on the evidence of two registered medical practitioners, one of whom shall be a medical practitioner approved for the purpose by the General Board of Control for Scotland, that a person who is detained (otherwise than while awaiting trial or sentence or under civil process) in a prison or other institution to which the Prisons (Scotland) Acts, 1860 to 1926, apply, or in a remand home, or in a school approved under section eighty-three of the Children and Young Persons (Scotland) Act, 1937, or in an inebriate reformatory, or who is detained in a State Mental Hospital, is a defective, the sheriff may make an order—

- (a) that he be transferred therefrom and sent to such institution for defectives as may be named in the order; or
- (b) that he be placed under guardianship;

and any order so made shall have the like effect as a judicial order under this Act.”

*Adjournment, remand, etc.*

## **26 Power of courts to adjourn a case after conviction and before sentence**

It is hereby declared that the power of a court to adjourn the hearing of a case includes power, after a person has been convicted or the court has found that he committed the offence and before he has been sentenced or otherwise dealt with, to adjourn the case for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with his case:



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

## **27 Remand for inquiry into physical or mental condition**

- (1) Without prejudice to any powers exercisable by a court under the last foregoing section, where a person is charged before a court with an offence punishable with imprisonment, and the court is satisfied that he committed the offence but is of opinion that an inquiry ought to be made into his physical or mental condition before the method of dealing with him is determined, the court shall remand him in custody or on bail for such period or periods, no single period exceeding three weeks, as the court thinks necessary to enable a medical examination and report to be made.
- (2) Where a person is remanded on bail under this section, bail shall be found by bail bond, and it shall be a condition of the bond that he shall undergo medical examination by a registered medical practitioner at such institution or place as may be specified in the bond or by such registered medical practitioner as may be so specified; and, if arrangements have been made for his reception, it may be a condition of the bond that the person shall, for the purpose of the examination, reside, for such period as may be specified, in an institution or place so specified, not being an institution or place to which he could have been remanded in custody.
- (3) Where a person remanded on bail under this section fails to comply with any such condition of the bond as is mentioned in the last foregoing subsection, the bail may be forfeited.
- (4) On exercising the powers conferred by this section the court shall—
  - (a) where the person is remanded in custody, send to the institution or place in which he is detained; and
  - (b) where the person is released on bail, send to the institution or place at which or the person by whom he is to be examined,a statement of the reasons for which the court is of opinion that an inquiry ought to be made into his physical or mental condition, and of any information before the court about his physical or mental condition.
- (5) Notwithstanding anything in the Lunacy (Scotland) Acts, 1857 to 1913, or the Mental Deficiency (Scotland) Acts, 1913 and 1940, a person who has been remanded on bail under this section may be received for the purposes of medical examination in a mental hospital within the meaning of the Lunacy (Scotland) Acts, 1857 to 1913, or in an institution for defectives within the meaning of the Mental Deficiency (Scotland) Acts, 1913 and 1940:

Provided that a person received under this section in a private mental hospital or in an institution shall, for the purposes of section twenty-eight of the Lunacy (Scotland) Act, 1857 or of any regulations under section thirty-one of the Mental Deficiency and Lunacy (Scotland) Act, 1913, relating to the number of patients who may be so received, as the case may be, be reckoned as a patient.

## **28 Remand and committal of persons under 21**

- (1) Where a court remands or commits for trial or for sentence a person under twenty-one years of age who is charged with or convicted of an offence and is not released on bail,

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then, except as otherwise expressly provided by this section, the following provisions shall have effect, that is to say—

- (a) if he is under fourteen years of age, he shall be committed to a remand home;
- (b) if he is not less than fourteen but under seventeen years of age, he shall be committed to a remand home unless the court certifies that he is of so unruly a character that he cannot safely be detained in a remand home or of so depraved a character that he is not fit to be so detained;
- (c) if he is not less than seventeen years of age, or if the court certifies as mentioned in the last foregoing paragraph, 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 a person being not less than fourteen but under seventeen years of age is remanded in custody under the last foregoing section of this Act for an inquiry into his physical or mental condition, and the court is satisfied that facilities for such an inquiry during his detention in the remand home to which he would, but for this subsection, have been committed are not provided or otherwise made available under this Act, then 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, he shall be committed to a remand centre.
- (3) Where any person is committed to a remand home or a remand centre under any provision of this Act, the home or centre shall be specified in the warrant and he shall there be detained for the period for which he is remanded or until he is liberated in due course of law.
- (4) Where any person has been committed to a remand home under any provision of this Act, the court by which he was committed, or, if application cannot conveniently be made to that court, the sheriff having jurisdiction in the place where that court sat, may vary the commitment by substituting another remand home for that remand home; and if the person so committed is not less than fourteen years of age and it appears to the court that he is of so unruly a character that he cannot safely be detained in a remand home, or to be of so depraved a character that he is not a fit person to be so detained, the court 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.

*Miscellaneous provisions relating to jurisdiction, procedure, appeals, etc.*

## **29 Jurisdiction and procedure in respect of certain indictable offences committed abroad**

- (1) Any British subject who in a country outside the United Kingdom does any act or makes any omission which if done or made in Scotland would constitute the crime of murder or of culpable homicide shall be guilty of the same crime and subject to the same punishment as if the act or omission had been done or made in Scotland.
- (2) Any British subject employed under His Majesty's Government in the United Kingdom in the service of the Crown who, in a foreign country, when acting or

purporting to act in the course of his employment, does any act or makes any omission which if done or made in Scotland would constitute an offence punishable on indictment shall be guilty of the same offence, and subject to the same punishment, as if the act or omission had been done or made in Scotland.

- (3) A person may be proceeded against, indicted, tried and punished for an offence under this section in any county or place in Scotland in which he is apprehended or is in custody as if the offence had been committed in that county or place; and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in that county or place.

### **30 Amendment of Criminal Appeal (Scotland) Act, 1926**

- (1) For subsection (4) of section nine of the Criminal Appeal (Scotland) Act, 1926, there shall be substituted the following subsection—

“(4) —

- (a) The time during which an appellant, after admission to bail under this section, is at large pending the determination of his appeal shall not be reckoned as part of any term of imprisonment under his sentence;
  - (b) The time during which an appellant is in custody pending the determination of his appeal shall, subject to any direction which the Court may give to the contrary, be reckoned as part of any term of imprisonment under his sentence;
  - (c) Imprisonment under the sentence of an appellant shall, subject to any direction which the Court may give to the contrary, be deemed to run, if the appellant is in custody, as from the date on which the sentence was passed by the court of trial, and to begin to run or to be resumed, if the appellant is not in custody, as from the date on which he is received into prison under the sentence;
  - (d) In this subsection references to a prison and imprisonment shall include respectively references to a Borstal institution, detention centre or remand home and to detention in such institution, centre or home, and any reference to a sentence shall be construed as a reference to a sentence passed by the court of trial or by the Court on appeal as the case may require.”
- (2) The power of the Secretary of State under section sixteen of the said Act to refer to the High Court of Justiciary the case, or any point arising on the case, of a person convicted on indictment, shall be exercisable whether or not that person has petitioned for the exercise of His Majesty's mercy.

### **31 Art and part guilt of statutory offence**

For the removal of doubts it is hereby declared that a person may be convicted of, and punished for, a contravention of any statute or order, notwithstanding that he was guilty of such contravention as art and part only.

### **32 Provision for death or illness of judge presiding at trial on indictment**

- (1) Where at any sitting of the High Court of Justiciary or of the sheriff court for the trial of cases on indictment, the court is unable to proceed owing to the death or illness of the presiding judge, it shall be lawful for the clerk of court—

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- (a) in the case where the diet has not been called, to convene the court and adjourn that diet and any other diet appointed for that sitting to a later sitting;
- (b) in the case where the diet has been called but no evidence has been led, to adjourn the diet or any other diet appointed for that sitting to a later sitting; and
- (c) where evidence has been led, to desert the diet pro loco et tempore and to discharge the jury ;

and any such continuation, adjournment, desertion or other proceeding shall be entered in the record by the clerk of court.

- (2) Where a diet is deserted in pursuance of paragraph (c) of the last foregoing subsection it shall be lawful for the Lord Advocate to raise and insist in a new indictment, and in any such case where the accused is in custody it shall not be necessary that a new warrant for his incarceration be granted, and the warrant of commitment on which he is at the time in custody till liberation in due course of law shall continue in force, and in any such case where the accused is at liberty on bail his bail shall continue in force.

### **33 Instructions by Lord Advocate as to reporting offences**

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

### **34 Proof of exceptions, qualifications, etc., in proceedings on indictment**

The provisions of paragraphs (3) and (5) of section nineteen of the Summary Jurisdiction (Scotland) Act, 1908 (which relate respectively to the proof of exceptions, etc., and of qualifications necessary to the commission of an offence) shall apply to procedure under indictment in like manner as they apply to summary procedure and accordingly paragraph (4) of section seventy-seven of the said Act shall have effect as if for the words " Sections ten " there were substituted the words Section ten, paragraphs (3) and (5) of section nineteen, section ".

### **35 Proof as to productions in proceedings on indictment**

Where, in any proceedings on indictment, a person who has examined a production is adduced to give evidence with regard thereto and the production has been lodged at least eight days before the second diet, it shall not be necessary to prove that the production was received by him in the condition in which it was taken possession of by the procurator fiscal or the police and returned by him after his examination of it to the procurator fiscal or the police unless the accused, at least four days before the second diet gives to the Crown Agent, where he is cited to the High Court of Justiciary for the second diet, or to the procurator fiscal of the district to the court of which he is cited for the second diet, where the case is to be tried in the sheriff court, written notice that he does not admit that the production was received or returned as aforesaid.

### **36 Imprisonment for non-payment of fines imposed on conviction on indictment**

Section seventy-seven of the Summary Jurisdiction (Scotland) Act, 1908, in so far as it directs that section forty-eight thereof shall apply to procedure under indictment shall cease to have effect and the maximum period of imprisonment that may be imposed

in default of the payment of a fine imposed on conviction on indictment shall be as follows:—

<i>Amount of Fine.</i>	<i>Period of Imprisonment.</i>
Not exceeding twenty pounds	Three months.
Exceeding twenty but not exceeding one hundred pounds	Four months.
Exceeding one hundred but not exceeding five hundred pounds	Six months.
Exceeding five hundred pounds	Twelve months.

### **37 Payment by instalments of fines imposed on conviction on indictment**

- (1) Where a court imposes a fine on a person convicted on indictment, the court may, either at the same or at any subsequent time, order payment of the fine by instalments of such amounts, and at such times, as it may think fit, and where any instalment is not paid at the time so ordered, that person shall be liable to imprisonment for such period as bears to the period specified in default of payment of the fine the same proportion, as nearly as may be, as the sum of the unpaid instalments bears to the total amount of the fine.
- (2) Where in pursuance of the last foregoing subsection a person is imprisoned in default of payment of any instalment of a fine, and there is paid to the governor of the prison in which the said person is imprisoned a sum in part satisfaction of the sum of the unpaid instalments of the said fine, the term of imprisonment of the said person shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which he was sentenced as the sum so paid bears to the sum for which he is liable.
- (3) Where a court has imposed a fine on a person convicted on indictment and has ordered payment of the fine by instalments in accordance with the terms of subsection (1) of this section, the court may at any time before imprisonment has followed on the sentence, without requiring the attendance of the accused, reduce the amount, or allow further time for the payment, of any instalment (whether the time for payment thereof has or has not expired), or order payment of the fine, so far as unpaid, by instalments of smaller amounts or at longer intervals than originally ordered.
- (4) The High Court of Justiciary may by Act of Adjournal regulate the procedure to be followed in cases arising under this section.

### **38 Amendment of Criminal Procedure (Scotland) Act, 1887, s. 59**

The power conferred by section fifty-nine of the Criminal Procedure (Scotland) Act, 1887, both as originally enacted, and as applied to summary proceedings by section five of and Schedule B to the Summary Jurisdiction (Scotland) Act, 1908, to convict a person of an offence other than that with which he is charged in an indictment or 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.

### **39 Previous convictions in proceedings on indictment**

- (1) The following provisions shall have effect with regard to previous convictions of persons proceeded against on indictment—
  - (a) No mention shall be made in the indictment of previous convictions, nor shall extracts of previous convictions be included in the list of productions annexed to the indictment;
  - (b) If the prosecutor desires to place before the court any previous conviction as an aggravation of any charge contained in the indictment, he shall cause to be served on the accused with the indictment a notice in the form as nearly as may be of Form No. 1 of the Seventh Schedule to this Act and any conviction set forth in that notice shall be held to apply to the accused unless he gives, in accordance with the next succeeding paragraph, written intimation objecting to such conviction on the ground that it does not apply to him or is otherwise inadmissible;
  - (c) Where the accused pleads not guilty at the first diet intimation objecting to a conviction under the last foregoing paragraph shall be given, at least five clear days before the second diet, to the Crown Agent, where the accused is cited to the High Court of Justiciary for the second diet, or to the procurator fiscal of the district to the court of which the accused is cited for the second diet where the case is to be tried in the sheriff court; and where the accused pleads guilty at the first diet, no objection to any such conviction shall be entertained unless the accused has given at least two clear days before that diet intimation to the procurator fiscal of the district to the court of which the accused is cited for that diet;
  - (d) Where notice is given by the accused under section thirty-one of the Criminal Procedure (Scotland) Act, 1887, of his intention to plead guilty and the prosecutor desires to place before the court any previous conviction as an aggravation of the charge, he shall cause to be served on the accused with the indictment a notice in the form as nearly as may be of Form No. I of the Seventh Schedule to this Act, and any conviction set forth in that notice shall be held to apply to the accused unless within two days after service of the notice he gives to the procurator fiscal written intimation objecting to such conviction on the ground that it does not apply to him or is otherwise inadmissible;
  - (e) Previous convictions shall not be laid before the presiding judge until the prosecutor moves for sentence, and in that event the prosecutor shall lay before the judge a copy of the notice referred to in paragraph (b) or paragraph (d) of this subsection;
  - (f) Where any such intimation as aforesaid is given it shall be competent to prove any previous conviction included therein in the manner set forth in section sixty-six of the Criminal Procedure (Scotland) Act, 1887, and the provisions of the said section shall apply accordingly.
- (2) Any conviction which is admitted in evidence by the court under the last foregoing subsection shall be entered in the record of the trial.
- (3) Nothing herein contained shall prevent evidence of previous convictions being led in any case where such evidence is competent in support of a substantive charge.

#### **40 Proceedings on indictment against bodies corporate**

- (1) In any proceedings on indictment against a body corporate the indictment may be served by delivery of a copy of the indictment with notice to appear attached thereto at the registered office or, if there is no registered office or the registered office is not in the United Kingdom, at the principal place of business in the United Kingdom of the body corporate.

Where a registered letter containing a copy of the indictment has been sent by post to the registered office or principal place of business of the body corporate, an acknowledgment or certificate of the delivery of the letter issued by the Postmaster-General in pursuance of regulations under the Post Office Act, 1908, shall be sufficient evidence of the delivery of the letter at the registered office or place of business on the day specified in such acknowledgment or certificate.

- (2) In any such proceedings as aforesaid the body corporate may, for the purpose of—
- (a) stating objections to the competency or relevancy of the indictment or proceedings; or
  - (b) tendering a plea of guilty or not guilty; or
  - (c) making a statement in mitigation of sentence;
- appear by a representative of the body corporate.
- (3) Where at the first diet in any such proceedings as aforesaid the body corporate does not appear or tender any plea in accordance with the provisions of the last foregoing subsection, or by counsel or a solicitor, it shall be deemed to have tendered a plea of not guilty.
- (4) Where at the second diet in any such proceedings as aforesaid the body corporate does not appear in accordance with the provisions of subsection (2) of this section, or by counsel or a solicitor, the court shall, on the motion of the prosecutor, if it is satisfied that the provisions of subsection (1) of this section have been complied with, proceed to hear and dispose of the case in the absence of the body corporate.
- (5) Where in any such proceedings as aforesaid a body corporate is sentenced to a fine, the fine may be recovered in like manner in all respects as if a copy of the sentence certified by the clerk of the court were an extract decree of the Court of Session for the payment of the amount of the fine by the body corporate to the King's and Lord Treasurer's Remembrancer.
- (6) Nothing contained in sections twenty-eight or twenty-nine of the Criminal Procedure (Scotland) Act, 1887, shall require a plea tendered by or on behalf of a company to be signed.
- (7) If on the application of the procurator fiscal, a sheriff is satisfied that there is reasonable ground for suspecting that an offence has been or is being committed by a body corporate, the sheriff shall have the like power to grant warrant for the citation of witnesses and the production of documents and articles as he would have if a petition charging an individual with the commission of the offence were presented to him.
- (8) In this section, the expression "representative" in relation to a body corporate against which such proceedings as aforesaid are brought, means an officer or servant of the body corporate duly appointed by it for the purpose of those proceedings. Such appointment need not be under the seal of the body corporate, and a statement in writing purporting to be signed by the managing director of, or by any person having or being one of the persons having the management of the affairs of the body corporate, to

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the effect that the person named in the statement has been appointed the representative of the body corporate for the purpose of the said proceedings shall be admissible without further proof as evidence that the person has been appointed.

#### **41 Alteration of diet in indictment and in summary proceedings**

- (1) Where in any proceedings on indictment the second diet in which is to be in the sheriff court the indictment is not brought to trial at that diet and a warrant has been issued by the sheriff clerk under section twenty-three of the Criminal Procedure (Scotland) Act, 1887, for a subsequent sitting of the court on a day within one month after the date of the aforesaid second diet, it shall be lawful for the court to adjourn that diet to the subsequent sitting, and the warrant shall have effect as if the second diet had been originally fixed for the date of such subsequent sitting.
- (2) Where a diet has been fixed for the trial of any summary complaint, and the parties desire that the complaint should be disposed of at an earlier or a later diet, the court may on a joint application in writing by the parties or their solicitors discharge the diet so fixed and fix in lieu thereof an earlier or a later diet.

#### **42 Amendment of False Oaths (Scotland) Act, 1933**

- (1) Section two of the False Oaths (Scotland) Act, 1933 (which penalises certain false statements) shall apply in like manner as it applies to the statements therein mentioned to any oral statement made for the purpose of any entry in a register kept in pursuance of any Act of Parliament.
- (2) Any proceedings under the Summary Jurisdiction (Scotland) Act, 1908, for an offence against the False Oaths (Scotland) Act, 1933, may, notwithstanding anything in the first mentioned Act, be commenced at any time within one year from the date of the commission of the offence, or within three months from the date when evidence sufficient in the opinion of the Lord Advocate to justify the proceedings comes to his knowledge whichever period last expires; and for the purposes of this subsection a certificate purporting to be signed by or on behalf of the Lord Advocate as to the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence thereof.

#### **43 Summary prosecution of uttering forged document**

For the removal of doubt it is hereby declared that it is competent to prosecute summarily in the sheriff court the crime of uttering a forged document.

#### **44 Power of court to refund bail**

Where any court has made an order for the forfeiture of bail it shall be competent for the court, if it is satisfied that it is reasonable in all the circumstances to do so, to recall the order and direct that the bail money forfeited shall be refunded. Any decision of a court under this section shall be final and not subject to review.

#### **45 Bail in summary proceedings**

Sections five, six and seven of the Bail (Scotland) Act, 1888 (which relate to applications for bail and to appeals against decisions in such applications) shall, with any necessary modifications, apply to an application for bail by a person charged with



an offence on complaint under the Summary Jurisdiction (Scotland) Act, 1908, in like manner as those sections apply to an application for bail by a person committed until liberation in due course of law.

#### **46 Previous convictions in summary proceedings**

- (1) Section eighteen of and Schedule C to the Summary Jurisdiction (Scotland) Act, 1908, in so far as they require a statutory charge included in a summary complaint to specify the enactment fixing the penalty or to set forth the penalty, shall cease to have effect.
- (2) Section thirty-four of the said Act, in so far as it requires previous convictions to be set forth in a summary complaint, shall cease to have effect and no such previous conviction shall be laid before the judge in any proceedings on such complaint until the judge is satisfied that the charge is proved, and in that event the prosecutor shall lay before the judge a copy of any notice served on the accused in accordance with subsection (3) or subsection (4) of this section.
- (3) Where a summary complaint includes any statutory charge notice in the form as nearly as may be of Form No. 2 of the Seventh Schedule to this Act shall be served on the accused with the complaint where he is cited to a diet, and, where he is in custody, the complaint and such a notice shall be served on him before he is asked to plead.
- (4) Where the accused in any summary proceedings has been previously convicted of any offence forming an aggravation of any offence libelled in the complaint a notice in the form as nearly as may be of Form No. 3 or Form No. 4 of the Seventh Schedule to this Act shall be served on the accused with the complaint where he is cited to a diet, and, where he is in custody, the complaint and such a notice shall be served on him before he is asked to plead.
- (5) A copy of any notice served on an accused under this section shall be entered in the record or minutes of the proceedings.
- (6) Nothing herein contained shall prevent evidence of previous convictions being led in any case where such evidence is competent in support of a substantive charge.

#### **47 Exercise of power conferred on prosecutor by the Summary Jurisdiction (Scotland) Act, 1908**

- (1) The power conferred by section seventy-three of the Summary Jurisdiction (Scotland) Act, 1908, on the prosecutor in a summary prosecution to consent to a conviction and sentence appealed against being set aside shall be exercisable, where the appeal is by stated case, at any time within ten days after the receipt by the prosecutor of the draft stated case and, where the appeal is by suspension, at any time within ten days after the service on the prosecutor of the bill of suspension.
- (2) The limit on the amount of the expenses that may be awarded to an appellant under the said section shall be increased from three guineas to five guineas.

#### **48 Appeal where trial judge unable to state case**

Where a person convicted under the Summary Jurisdiction (Scotland) Act, 1908, has made application thereunder for a stated case, and the judge by whom he was convicted dies before signing the case or is precluded by illness or other cause from so doing, it shall be competent for such person to present a bill of suspension to the High Court

of Justiciary and to bring under the review of that Court any matter which might have been so brought under review by stated case.

#### **49 Amendment of Summary Jurisdiction (Scotland) Act, 1908**

For sections sixty-five, sixty-six and sixty-seven of the Summary Jurisdiction (Scotland) Act, 1908, there shall be substituted the following sections:—

- (1) Within one month after receipt of the draft case under the last foregoing section each party shall cause to be transmitted to the judge against whose judgment the appeal is taken and to the other parties a note of any adjustments he desires to have made on the draft case or intimate that he has no such adjustments to suggest, and if the appellant fails so to do he shall be deemed to have abandoned his appeal, and in any such case the court shall have the like power to grant warrant for his apprehension and imprisonment as is conferred by section sixty-three of this Act.
- (2) Within fourteen days after receipt of any such adjustments or intimation as aforesaid the judge against whose judgment the appeal is taken shall (unless the appellant is deemed to have abandoned his appeal), after considering any such adjustments state and sign the case.

As soon as the case shall be signed by the judge against whose judgment the appeal is taken the clerk of court shall send it to the appellant and transmit the complaint, productions and any other proceedings in the cause to the clerk of justiciary.

- (1) The appellant shall within five days after receiving the case send a copy of it to the respondent and cause it to be transmitted to or lodged with the clerk of justiciary together with a certificate by himself or his agent that a copy has been sent to the respondent in accordance with the requirement hereinbefore contained.
- (2) If the appellant fails to comply with the last foregoing subsection he shall be deemed to have abandoned his appeal, and the court shall have the like power to grant warrant for his apprehension and imprisonment as is conferred by section sixty-three of this Act.”

## **PART II**

### ADMINISTRATIVE PROVISIONS AND PROVISIONS AS TO TREATMENT OF PRISONERS, ETC.

#### *Institutions for offenders*

#### **50 Remand centres, detention centres and Borstal institutions**

- (1) The Secretary of State may provide—
  - (a) remand centres, that is to say places for the detention of persons not less than fourteen but under twenty-one years of age who are remanded or committed in custody for trial or sentence;
  - (b) detention centres, that is to say places in which persons not less than fourteen but under twenty-one years of age who are ordered to be detained in such

centres under this Act may be kept for short periods under discipline suitable to persons of their age and description; and

- (c) Borstal institutions, that is to say places in which offenders who on the date of their conviction were not less than sixteen but under twenty-one years of age may be detained and given such training and instruction as will conduce to their reformation and the prevention of crime.
- (2) The Secretary of State shall provide in remand centres facilities for the observation and examination of any person detained therein on whose physical or mental condition a medical report may be desirable for the assistance of the court in determining the most suitable method of dealing with his case.
  - (3) Where any person under seventeen years of age is committed to, or ordered to be detained in, a remand centre under this Act for the purpose of obtaining a medical report on his physical or mental condition, the council of the county or large burgh who would be responsible for his maintenance if he were detained in a remand home shall pay to the Secretary of State, in such manner as the Secretary of State may with the approval of the Treasury determine, such sums in respect of the maintenance of that person as the Secretary of State may with the like approval direct.
  - (4) The Prisons (Scotland) Acts, 1860 to 1926 shall, subject to such adaptations and modifications as may be made by rules of the Secretary of State, apply to remand centres, detention centres and Borstal institutions, and to persons detained therein, as they apply to prisons and prisoners.
  - (5) The appropriation of a prison vested in the Secretary of State under the Prisons (Scotland) Act, 1877 for use as a remand centre, detention centre or Borstal institution shall not be deemed, for the purposes of section thirty-nine of that Act, to be a discontinuance of the prison.
  - (6) Section six of the Prevention of Crimes Act, 1871, and section eight of the Penal Servitude Act, 1891 (which relate to the registration, measurement and photographing of prisoners) shall have effect as if references therein to prisons and prisoners included references to remand centres, detention centres and Borstal institutions, and to persons detained therein.

## **51 Remand homes**

- (1) As from such date as may be specified in an order made by statutory instrument by the Secretary of State, no premises shall be used as a remand home unless a certificate of approval has been issued by the Secretary of State.
- (2) The Secretary of State may by rules made under this Act apply to remand homes, with such adaptations and modifications as he thinks fit, the provisions of section eighty-three and subsection (3) of section one hundred and nine of the Children and Young Persons (Scotland) Act, 1937 (which relate to the approval of schools for the purposes of that Act and the evidence of such approval).
- (3) No person shall be appointed after the commencement of this Act to be in charge of a remand home unless his appointment has been approved by the Secretary of State.
- (4) Councils of counties and) large burghs may provide in remand homes .provided for their areas facilities for the observation and examination of any person detained therein On whose physical or mental condition a medical report may be desirable for the assistance of the court in determining the most suitable method of dealing with his

case, or may, if facilities for observation and examination are available at any other institution or place, arrange for the use of those facilities for the observation and examination of any such person as aforesaid.

- (5) Subsections (5) and (6) of section seventy-one of this Act shall apply in relation to the removal of any person from a remand home to an institution or place where facilities are available in pursuance of arrangements made under the last foregoing subsection for the purpose of obtaining such a report as aforesaid as they apply in relation to any such removal as is mentioned in the said subsection (5).
- (6) Any expenses incurred by the council of a county or large burgh in giving effect to arrangements made under subsection (4) of this section, and any sums paid by such a council under subsection (3) of the last foregoing section, shall be treated for the purposes of any grant under section one hundred and seven of the Children and Young Persons (Scotland) Act, 1937, as expenses of the council in respect of remand homes.

## **52 Acquisition of land for prisons and other institutions**

- (1) The Secretary of State may purchase by agreement, or compulsorily, any land required for the alteration, enlargement or rebuilding of a State Mental Hospital or of a prison or other institution to which the Prisons (Scotland) Acts, 1860 to 1926, apply or for building or establishing a new State Mental Hospital, a new prison or a new institution as aforesaid or for any other purpose connected with the management of any such State Mental Hospital, prison or institution (including the provision of accommodation for officers or servants employed therein).
- (2) For the purpose of the compulsory purchase of land by the Secretary of State under the last foregoing subsection, the Acquisition of Land (Authorisation Procedure) (Scotland) Act, 1947 shall apply as if paragraph (d) of subsection (1) of section- one thereof (which refers to the compulsory purchase of land by the Secretary of State under the National Health Service (Scotland) Act, 1947) included a reference to the last foregoing subsection.
- (3) In relation to the purchase of land by agreement under this section, the Lands Clauses Acts (except the provisions relating to the purchase of land otherwise than by agreement and the provisions relating to access to the special Act, and except sections one hundred and twenty to one hundred and twenty-five of the Lands Clauses Consolidation (Scotland) Act, 1845) shall be incorporated with this section, and in construing those Acts as, so incorporated this section shall be deemed to be the special Act and references to the promoters of the undertaking shall be construed as references to the Secretary of State.

*Rules for management of prisons, etc.*

## **53 Rules for the management of prisons, remand centres, detention centres and Borstal institutions**

- (1) The Secretary of State may make rules for the regulation and management of prisons, remand centres, detention centres and Borstal institutions respectively, and for the classification, treatment, employment, discipline and control of persons required to be detained therein.

- (2) Rules made under this section shall make provision for ensuring that a person who is charged with any offence under the rules shall be given a proper opportunity of presenting his case.
- (3) Rules made under this section may provide for the training of particular classes of persons and their allocation for that purpose to any prison or other institution in which they may lawfully be detained.
- (4) Rules made under this section may provide for the appointment of a convenient prison or prisons—
  - (a) in which prisoners are to be confined before and during trial, or at either of such times;
  - (b) in which particular classes of prisoners may be confined;
  - (c) in which civil prisoners may be confined during the period of their imprisonment.
- (5) Rules made under this section shall provide for the special treatment of the following persons whilst required to be detained in a prison, that is to say—
  - (a) any person serving a sentence of corrective training or preventive detention;
  - (b) any person serving a sentence on conviction of sedition;
  - (c) any appellant within the meaning of the Criminal Appeal (Scotland) Act, 1926, pending the determination of his appeal;
  - (d) any other person detained in a prison, not being a person serving a sentence imposed on conviction of an offence.
- (6) Rules made under this section may provide for the temporary release of persons serving a sentence of imprisonment, corrective training, preventive detention, or Borstal training.
- (7) Section twenty-three of the Peterhead Harbour of Refuge Act, 1886, in so far as it confers power to order the infliction of corporal punishment, shall cease to have effect, and no prisoner detained in Peterhead Prison shall be liable to corporal punishment.

#### **54 Constitution and functions of visiting committees**

- (1) Rules made under the last foregoing section shall provide for the constitution, for prisons, of visiting committees appointed, at such times, in such manner, for such periods and by such county and town councils as may be prescribed by the rules.
- (2) Rules made as aforesaid shall secure that any such visiting committee shall include such number of women as may be prescribed by the rules, and where a number less than the prescribed number is appointed by the said councils the Secretary of State may appoint such number of women as may be necessary to bring the number appointed by the councils up to the number prescribed.
- (3) The Secretary of State shall appoint for every remand centre, detention centre and Borstal institution a visiting committee of which not less than two members shall be burgh magistrates or justices of the peace and not less than such number of members as may be prescribed by the rules shall be women.
- (4) Rules made as aforesaid shall prescribe, the functions of visiting committees, and shall among other things require the members to pay frequent visits to the prison, remand centre, detention centre or Borstal institution, as the case may be, and hear

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any complaints which may be made by the persons detained therein and report to the Secretary of State any matter which they consider it expedient to report; and any member of a visiting committee may at any time enter the prison, remand centre, detention centre or Borstal institution, as the case may be, and shall have free access to every part thereof and to every person detained therein.

- (5) Rules made as aforesaid may require the visiting committee appointed for any prison or Borstal institution to consider periodically the character, conduct and prospects of each of the persons sentenced to corrective training, preventive detention or Borstal training who is detained therein, and to report to the Secretary of State on the advisability of his release on licence or under supervision.
- (6) The Secretary of State may pay—
- (a) to the members of any visiting committee appointed under or in pursuance of this section such allowances in respect of loss of earnings or travelling or subsistence or other expenses necessarily suffered or incurred in the performance of their duties; and
  - (b) to the officers of any such committee such remuneration (whether by way of salary or fees) and such allowances in respect of travelling or subsistence expenses,
- as the Secretary of State may with the consent of the Treasury determine.

## **55 Amendment of Prisons (Scotland) Act, 1860 as to introduction of prohibited articles**

For the purposes of section seventy-five of the Prisons (Scotland) Act, 1860 (which relates to the introduction of prohibited articles into prisons) a person shall be deemed to introduce an article into a prison if he conveys it to a prisoner outside the prison, or deposits it at any place outside the prison with intent that it shall come into the possession of a prisoner.

*Remission for good conduct and release on licence, etc.*

## **56 Remission for good conduct and release on licence of young prisoners**

- (1) Rules made under section fifty-three of this Act may make provision whereby, in such circumstances as may be prescribed by the rules, a person serving a sentence of imprisonment or ordered to be detained in a detention centre for such a term as may be so prescribed, may be granted remission of such part of that sentence or term as may be so prescribed on the ground of his industry and good conduct; and on the discharge of a person from a prison or detention centre in pursuance of any such remission as aforesaid his sentence, or as the case may be his term of detention, shall expire.
- (2) If it appears to the Secretary of State that a person serving a sentence of imprisonment was under the age of twenty-one years at the commencement of his sentence, he may direct that instead of being granted remission of his sentence under the rules such person shall, at any time on or after the day on which he could have been discharged if the remission had been granted, be released on licence under the provisions of the Eighth Schedule to this Act.
- (3) For the purposes of this section, consecutive terms of imprisonment shall be treated as one term.

**57 Release on licence of persons serving imprisonment for life**

- (1) The Secretary of State may at any time if he thinks fit release on licence a person serving a term of imprisonment for life subject to compliance with such conditions, if any, as the Secretary of State may from time to time determine.
- (2) The Secretary of State may at any time by order recall to prison a person released on licence under this section, but without prejudice to the power of the Secretary of State to release him on licence again; and where any person is so recalled his licence shall cease to have effect and he shall, if at large, be deemed to be unlawfully at large.

**58 After Care Council**

- (1) It shall be lawful for the Secretary of State to appoint a Council to be known as the After Care Council and consisting of such number of members as the Secretary of State may determine, being persons interested in the moral and social welfare of offenders, and the Secretary of State may appoint a Chairman and a Secretary of the Council and such other officers as he may deem necessary.
- (2) The After Care Council—
  - (a) may be appointed or specified as the society for the purposes of any of the following provisions of this Act, namely:—section twenty-two, paragraph 2 of the Fourth Schedule, paragraph 2 of the Fifth Schedule and paragraph 1 of the Eighth Schedule ; and
  - (b) may undertake such other duties in connection with the after care of offenders as the Secretary of State may require.
- (3) The Secretary of State may pay—
  - (a) to the members of the After Care Council such allowances in respect of loss of earnings or travelling or subsistence or other expenses necessarily suffered or incurred in the performance of their duties; and
  - (b) to the officers of the said Council such remuneration (whether by way of salary or fees) and such allowances in respect of travelling or subsistence,as the Secretary of State may with the approval of the Treasury determine.

*Removal and transfer to and from prisons and other institutions***59 Temporary detention of persons liable to detention in a Borstal institution**

A person who is required to be taken to a Borstal institution may, until arrangements can be made for taking him there, be temporarily detained elsewhere, and the period for which he is so detained shall count as part of the period for which he is liable to be detained in a Borstal institution under this Act.

**60 Transfers from prison to Borstal institution and vice versa**

- (1) If the Secretary of State is satisfied that a person serving a sentence of imprisonment is under twenty-one years of age and might with advantage be detained in a Borstal institution, he may, after consultation where practicable with the judge by whom or the presiding chairman of the court by which the sentence was passed, transfer such person to a Borstal institution; and the provisions of the Fourth Schedule to this Act

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shall thereupon apply to him as if he had on the date of the transfer been sentenced to Borstal training:

Provided that if on that date the unexpired term of his sentence is less than three years those provisions shall apply to him as if he had been sentenced to Borstal training three years before the expiration of that term.

- (2) If a person detained in a Borstal institution is reported to the Secretary of State by the visiting committee to be incorrigible, or to be exercising a bad influence on the other inmates of the institution, the Secretary of State may present an application to the sheriff within whose jurisdiction the institution is situate for commutation to imprisonment of the unexpired part of the term for which the said person is then liable to be detained in a Borstal institution and on any such application the sheriff may commute the said unexpired part to such a term of imprisonment, not exceeding the said unexpired part, as he may think fit; and for the purpose of this Act the said person shall be treated as if he had been sentenced to imprisonment for that term.

## **61 Removal of prisoners, etc., for judicial and other purposes**

- (1) Rules under section fifty-three of this Act may provide in what manner an appellant within the meaning of the Criminal Appeal (Scotland) Act, 1926, when in custody, is to be taken to, kept in custody at, and brought back from, any place at which he is entitled to be present for the purposes of that Act, or any place to which the High Court of Justiciary or any judge thereof may order him to be taken for the purpose of any proceedings of that court.
- (2) The Secretary of State may—
- (a) if he is satisfied that the attendance at any place in Great Britain of a person detained in Scotland in a prison, remand centre, detention centre, Borstal institution or remand home is desirable in the interests of justice or for the purposes of any public inquiry, direct him to be taken to that place;
  - (b) if he is satisfied that a person so detained requires medical or surgical treatment of any description, direct him to be taken to a hospital or other suitable place for the purpose of the treatment;

and where any person is directed under this subsection to be taken to any place he shall, unless the Secretary of State otherwise directs, be kept in custody while being so taken, while at that place, and while being taken back to the prison or other institution in which he is required in accordance with law to be detained.

## **62 Removal of prisoners, etc., to and from England and from the Isle of Man or Channel Islands**

- (1) The Secretary of State may, on the application of a person serving a sentence of imprisonment, corrective training, preventive detention or Borstal training, order his removal to a prison or Borstal institution in England; and any person so removed may be detained, released, recalled and otherwise dealt with as if he had been sentenced by a court in England and as if his sentence were one which could be imposed by such a court.
- (2) Any person sentenced, under the law for the time being in force, by any court in the Isle of Man or the Channel Islands to penal servitude, imprisonment, corrective training, preventive detention, detention in a Borstal institution, Borstal training or detention



in a detention centre may, if the Secretary of State so orders, be removed to a prison, Borstal institution or detention centre, as the case may be, in Scotland.

- (3) Any person ordered to be removed under the last foregoing subsection, and any person sentenced by a court in England who, under any enactment extending to England, is ordered to be removed to a prison or Borstal institution in Scotland, may be detained, released, recalled and otherwise dealt with as if his sentence had been passed by a court in Scotland and as if his sentence were one which could be imposed by such a court:

Provided that—

- (a) where a person so removed was undergoing or liable to undergo a term of penal servitude, he shall be treated as if that term were a term of imprisonment;
  - (b) where a person so removed was sentenced to detention in a Borstal institution he shall be treated as if he had been sentenced to Borstal training under this Act.
- (4) Any person removed under this section from the Isle of Man or the Channel Islands to a prison or Borstal institution in Scotland may, on his release under the provisions of the Fourth or Fifth Schedule to this Act or under section fifty-six of this Act, as the case may be, be placed under supervision in the Isle of Man or the Channel Islands, as the case may be, and those provisions (including the provisions of the Eighth Schedule to this Act), shall apply to him therein; and if any person so released is recalled under the provisions aforesaid, he may, if in the Isle of Man or the Channel Islands, be arrested without warrant and removed to Scotland for the purpose of being taken to a prison or Borstal institution as the case may be.
- (5) The provisions of the Ninth Schedule to this Act shall have effect in relation to persons for the time being in England who have been discharged from prisons and other institutions in Scotland (including persons who, before being so discharged, had been removed to such institutions under any enactment extending to England).
- (6) For the purposes of this section, a person sentenced to death by a court in England or in the Isle of Man or the Channel Islands who has been pardoned by His Majesty on condition that he serves a term of penal servitude or imprisonment shall be deemed to have been sentenced to penal servitude or imprisonment by that court.

#### *Treatment of persons of unsound mind and mental defectives*

### **63 Establishment of State Mental Hospitals**

- (1) The Secretary of State may provide accommodation in a State Mental Hospital for persons of unsound mind who are ordered to be kept in strict custody till His Majesty's pleasure be known and for other persons of unsound mind who cannot be suitably cared for in a mental hospital within the meaning of the Lunacy (Scotland) Acts, 1857 to 1913, and in connection therewith may provide such medical, nursing and other services as may be required.
- (2) The expressions " criminal lunatic " and " criminal lunatic asylum " shall cease to be used and there shall be respectively substituted in any enactment for those expressions the expressions " state mental patient " and " State Mental Hospital."
- (3) A State Mental Hospital shall be under the management of the General Board of Control for Scotland.

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- (4) Subsection (1) of section one and sections two, three and seven of the Criminal Lunatics (Scotland) Act, 1935, shall cease to have effect.
- (5) For the purposes of paragraph (a) of subsection (1) of section sixty-six of the "National Health Service (Scotland) Act, 1947 (which provides for the grant of superannuation benefits to certain officers engaged in health services), officers employed in a State Mental Hospital shall be, deemed to be engaged in health services.
- (6) The aforesaid General Board of Control may, with the approval of the Secretary of State, by statutory instrument make rules for the care and treatment of patients detained in a State Mental Hospital; and any statutory instrument containing such rules shall be laid before Parliament after being made.

#### **64 Removal of state mental patients, etc.**

- (1) The Secretary of State may—
  - (a) if he is satisfied that the attendance at any place in Great Britain of a state mental patient is desirable in the interests of justice or for the purposes of any public inquiry, direct him to be taken to that place;
  - (b) if he is satisfied that a state mental patient requires medical or surgical treatment which cannot be provided in the mental hospital in which he is required by law to be detained, direct him to be taken to a hospital or other suitable place for the purpose of the treatment,

and where any person is directed under this subsection to be taken to any place he shall, unless the Secretary of State otherwise directs, be kept in custody while being so taken, while at that place and while being taken back to the mental hospital in which he is required by law to be detained.
- (2) The Secretary of State may, on the application of a state mental patient or a relation of the patient, order the patient's removal from a mental hospital in Scotland to a mental hospital in England; and any patient so removed shall be liable to be dealt with as if he had been sentenced or ordered to be detained or otherwise committed to custody, as the case may be, by a court in England.
- (3) If, under any enactment extending to England, a Broadmoor patient is ordered to be removed from a mental hospital in England to a mental hospital in Scotland, he shall be liable to be dealt with as if he had been sentenced or ordered to be detained or otherwise committed to custody, as the case may be, by a court in Scotland.
- (4) In this section any reference to a mental hospital shall include a reference to a State Mental Hospital and references to a State Mental Hospital and to a state mental patient shall, until the day appointed for the coming into operation of section sixty-three of this Act, respectively include references to the lunatic department of Perth Prison and to persons detained therein.

#### **65 Treatment of persons transferred from prisons, etc., under the Mental Deficiency and Lunacy (Scotland) Act, 1913, s. 10**

- (1) Where an order under section ten of the Mental Deficiency and Lunacy (Scotland) Act, 1913, that a person be transferred to an institution for defectives or be placed under guardianship expires, or the person to whom the order relates is ordered to be discharged from such institution or guardianship then, if, at the time of such expiry or order for discharge, either—

- (a) the period during which such person could, if the order under the said section ten had not been made, have been detained in the prison or other place in which he was detained when that order was made, has not expired ; or
- (b) the person is subject to an order for his custody until His Majesty's pleasure be known,

the Secretary of State may remit him to any prison or other place in which he could have been detained if the order under the said section ten had not been made; and such person shall be liable accordingly to be dealt with as if he had never been transferred to the institution for defectives or placed under guardianship.

- (2) Subsection (1) of section sixteen of the Mental Deficiency and Lunacy (Scotland) Act, 1913 (which relates to transfer from institutions for defectives to mental hospitals and vice versa) shall not apply to a person detained in an institution for defectives during the period aforesaid; but if at any time during that period it appears to two registered medical practitioners that any person so transferred to the institution is of unsound mind, they shall certify in writing to that effect and the Secretary of State may thereupon by warrant direct that he be removed to such mental hospital as may be named in the warrant; and the Criminal and Dangerous Lunatics (Scotland) Amendment Act, 1871, shall apply to him as if he had been removed to the mental hospital from a prison.

#### *Miscellaneous*

### **66 Persons unlawfully at large**

- (1) Any person who, having been sentenced to imprisonment, corrective training, preventive detention or Borstal training, or ordered to be detained in a detention centre, or having been committed to a prison or remand centre, is unlawfully at large, may be arrested by a constable or prison officer without warrant in any part of Great Britain and taken to the place in which he is required in accordance with law to be detained.
- (2) Where any person sentenced to imprisonment, corrective training, preventive detention or Borstal training, or ordered to be detained in a remand home or detention centre, is, at any time during the period for which he is liable to be detained in pursuance of the sentence or order, absent, otherwise than with lawful authority, from the prison, Borstal institution, remand home or detention centre, as the case may be, then, unless the Secretary of State otherwise directs, no account shall be taken, in calculating the period for which he is liable to be so detained, of any time during which he is so absent:

Provided that this subsection shall not apply to any period during which any such person as aforesaid is detained in pursuance of an order of any court in a prison or other institution to which the Prisons (Scotland) Acts, 1860 to 1926 apply.

- (3) For the purposes of this section, a person who, after being temporarily released in pursuance of rules made under subsection (6) of section fifty-three' of this Act, is at large at any time during the period for which he is liable to be detained in pursuance of his sentence shall be deemed to be unlawfully at large if the period for which he was temporarily released has expired or if an order recalling him has been made by the Secretary of State in pursuance of the rules.

**67 Legal custody**

Any person required or authorised by or under this Act to be taken to any place or to be kept in custody shall, while being so taken or kept, be deemed to be in legal custody.

**68 Commutation of death sentence to sentence of imprisonment**

Where His Majesty pardons any person who has been sentenced to death on condition that he serves a term of imprisonment, that person shall be deemed to have been sentenced by the court before which he was convicted to imprisonment for the said term.

**69 Amendment of s. 75 of the Children and Young Persons (Scotland) Act, 1937**

(1) For subsection (1) of section seventy-five of the Children and Young Persons (Scotland) Act, 1937, there shall be substituted the following subsection:—

“(1) Where a court orders a child to be sent to an approved school, the order shall be an authority for his detention in an approved school until the expiry of a period of three years from the date of the order or the expiry of four months after he ceases to be of school age whichever is the later.”

(2) In the said section seventy-five as amended by this section the expression " school age " has the meaning assigned to it by section thirty-two of the Education (Scotland) Act, 1946:

Provided that—

- (a) subsection (4) of that section (which extends the school age in the case of certain children requiring special educational treatment); and
- (b) subsection (2) of section thirty-three of that Act (which provides that a child shall be deemed to attain any given age on the fixed date for commencing or for terminating attendance next following the day on which he actually attains that age)

shall not apply.

(3) The provisions of the said section seventy-five shall apply as amended by this section to any approved school order made before the commencement of this Act if the period during which the person to whom it relates could be detained thereunder apart from the provisions of this section has not expired at the commencement of this Act.

**70 Powers of court in relation to absconders from approved schools, etc.**

(1) Where a person in whose case an approved school order has been made is brought before a court of summary jurisdiction under section eighty-six of the Children and Young Persons (Scotland) Act, 1937, or paragraph 8 of the Second Schedule to that Act (which relate respectively to absconders and persons guilty of serious misconduct), the court may, subject to the following provisions of this section—

- (a) in any case, either make a new approved school order in his case, or order him to be taken back to the school and extend the period of his detention under the original order by such period not exceeding six months as the court may determine;
- (b) if he has attained the age of sixteen years, and the order for his detention was made in respect of an offence, sentence him to Borstal training:

Provided that if the court before which any person is brought as aforesaid is a court of summary jurisdiction other than a sheriff court or a stipendiary magistrate's court it shall have, in lieu of the power to pass a sentence of Borstal training, power to remit the person to the sheriff court in the manner provided by section nine of the Summary Jurisdiction (Scotland) Act, 1908, and the sheriff court shall on any such remit being made have the like power with regard to the person as if he had been brought before that court as aforesaid.

- (2) An order under paragraph (a) of the last foregoing subsection extending the period of detention under an approved school order shall have effect notwithstanding any limitation imposed by the Children and Young Persons (Scotland) Act, 1937, upon the period for which a person may be detained in an approved school; and in relation to a new approved school order made under that paragraph, sections seventy-five, seventy-seven and seventy-eight of that Act (which relate to the period of detention under approved school orders and to supervision and recall) shall have effect as if for any reference therein to the age of nineteen years there were substituted a reference to the age of nineteen years and a half.
- (3) Subject as hereinafter provided, His Majesty may by Order in Council prohibit courts of summary jurisdiction from making orders under paragraph (b) of subsection (1) of this section; and any such Order in Council may be limited to persons of one of the sexes:

Provided that no order in Council shall be made under this subsection until the Secretary of State is satisfied that adequate methods, other than Borstal training, are available for dealing with the persons to whom the Order relates.

- (4) A draft of any Order in Council under the last foregoing subsection shall be laid before Parliament, and the draft shall not be submitted to His Majesty in Council unless each House of Parliament presents an Address to His Majesty praying that the Order be made.

### **PART III**

#### **SUPPLEMENTAL**

#### **71 Enlargement of powers of courts under the Children and Young Persons (Scotland) Act, 1937**

- (1) The Children and Young Persons (Scotland) Act, 1937 (hereafter in this section referred to as the Act of 1937) shall have effect as if the powers conferred on a juvenile court by section sixty-eight of that Act (which enables a juvenile court to make certain orders in relation to refractory children and young persons) included a power to make (without making any other order or in addition to making an order placing the child or young person under the supervision of a probation officer or of some other person appointed for the purpose by the court) an order committing the child or young person to the care of any fit person whether a relative or not who is willing to undertake the care of him.
- (2) The power of a juvenile court under section eighty-eight of the Act of 1937 to revoke an order committing a child or young person to the care of a fit person shall include a power to substitute for that order an order placing the child or young person for a specified period not exceeding three years under the supervision of a probation officer

or of some other person appointed for the purpose by the court and section seventy of the Act of 1937 shall apply in relation to the substituted order as if it were an order made under Part IV of that Act.

- (3) Where any court before which a child or young person is brought upon an application for an order under any of the provisions of sections sixty-six to seventy of the Act of 1937 is not in a position to decide what order ought to be made, the court may (whether or not it also makes an interim order under subsection (2) of section seventy-one of that Act) record a finding of the fact that the child or young person is in need of care or protection or is beyond the control of his parent or guardian or is refractory as the case may be; and the said record shall be admissible as evidence of that fact for the purpose of any further hearing of that application.
- (4) Where with respect to a child or young person who is being detained in a place of safety under an interim order having effect by virtue of subsection (2) of section seventy-one of the Act of 1937 the court by which the order was made is satisfied on any occasion that by reason of illness or accident he is unable to appear personally before the court any further interim order which the court has power to make on that occasion may be made in the absence of the child or young person.
- (5) If at any time while there is in force an order made by a court under section forty-one, section fifty-eight, section seventy-one or section seventy-three of the Act of 1937 or section twenty-eight of this Act for the detention of a child or young person in a remand home or in some other place of safety the child or young person is found by reason of illness or accident or for any other reason to be in need of any medical treatment or examination which cannot properly be given or made in the remand home or other place of safety, the person in charge of the remand home or other place of safety may remove the child or young person therefrom to any place of safety being a place in which the necessary treatment or examination can be given or made; and the order shall so long as it remains in force—
  - (a) apply to the child or young person as if whilst being so removed to the last mentioned place of safety, whilst detained therein for the giving of treatment or the making of the examination and whilst being taken back to the place from which he was so removed he continued to be detained in the remand home or other place of safety specified in the order ; and
  - (b) be deemed to authorise the child or young person to be taken to the court from any place to which he has lawfully been removed by virtue of this subsection.
- (6) Whenever in pursuance of the last preceding subsection a child or young person is removed from any remand home or other place of safety for his detention in which such an order as is mentioned in that subsection has been made, being an order in force at the time of the removal, the person by whom he is so removed shall forthwith give written notice of the fact to the clerk of the court by which the order was made:

Provided that this subsection shall not apply in relation to the removal under the last foregoing subsection of a child or young person who returns to the remand home or place of safety on the day on which he is so removed.

## **72 Application to supervision orders of certain provisions relating to probation**

- (1) Subject to the provisions of this section, a supervision order (that is to say an order made under section sixty-six, section sixty-seven, section sixty-eight or section eighty-eight of the Children and Young Persons (Scotland) ' Act, 1937, or under section thirty-eight of the Education (Scotland) Act, 1946, placing a child or young person

under the supervision of a probation officer or of some other person appointed for the purpose by the court) may include any such requirement as to the residence of the person to whom the order relates, or as to treatment for his mental condition as may, by virtue of subsection (6) of section two or by virtue of section three of this Act, be included in a probation order and any other requirement which the court, in the particular circumstances of the case, considers necessary for effecting the purposes of the order:

Provided that a supervision order containing any such requirement shall not be made unless the child or young person consents thereto.

- (2) A supervision order shall cease to have effect when the person to whom it applies attains the age of eighteen.
- (3) The clerk of the court by which a supervision order is made or of the appropriate court shall forthwith cause a copy of the Order to be given to the parent or guardian of the child or to the young person to whom the order relates, to the person under whose supervision the child or young person is placed by the order and to the person in charge of any institution or place in which the child or young person is required by the order to reside; and subject to the provisions of this section, subsection (9) of section two of this Act shall apply to a supervision order which requires a person to reside in any institution as it applies to a probation order containing such a requirement.
- (4) If at any time during the period of supervision specified in a supervision order, the court by which the order was made or the appropriate court is satisfied on information on oath from the person under whose supervision the person to whom the order relates is placed that that person has failed to comply with any of the requirements of the order, the court may issue a citation requiring the person to whom the order relates to appear before the court at such time as may be specified in the citation, and in the event of his failing so to appear, the court may issue a warrant for his arrest.
- (5) Subsections (1) to (3) of section four of this Act, and the Second Schedule to this Act, shall apply in relation to the discharge, amendment and review of supervision orders as they apply in relation to the discharge, amendment and review of probation orders:

Provided that a supervision order may be amended under the said Second Schedule on application made by any person.

- (6) For the purposes of their application to supervision orders under this section, the provisions of this Act specified in subsections (1) (3) and (5) of this section shall have effect subject to the following modifications, that is to say—
  - (a) for references to a probation order there shall be substituted references to a supervision order;
  - (b) for references to the probation period there shall be substituted references to the period of supervision specified in the supervision order;
  - (c) for references to the probationer or the offender there shall be substituted references to the person in whose case the supervision order is or is to be made;
  - (d) references to the probation officer shall include references to a person not being a probation officer under whose supervision the child or young person to whom the supervision order relates is placed by virtue of the order;
  - (e) paragraph 5 of the said Second Schedule shall not apply except where the amending order requires the person to whom the supervision order relates to reside in an institution or to submit to treatment for his mental condition.

**73 Power to order detention in a remand centre under s. 71 of the Children and Young Persons (Scotland) Act, 1937**

- (1) Where the court before which a young person is brought is of opinion that an inquiry ought to be made into his physical or mental condition before it decides whether any and if so what order ought to be made under sections sixty-six to seventy-one of the Children and Young Persons (Scotland) Act, 1937, then, if 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, and is satisfied that facilities for such an inquiry cannot conveniently be provided in a place of safety in which he could otherwise be ordered to be detained under subsection (2) of section seventy-one of that Act, the court may order him to be detained in a remand centre; and the reference in the said subsection (2) to a place of safety shall be construed accordingly.
- (2) If a court which proposes to make an interim order under subsection (2) of the said section seventy-one in the case of a young person is of opinion that he is of so unruly a character that he cannot safely be detained in a remand home or of so depraved a character that he is not fit to be so detained, 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, a remand centre shall be included among the places of safety in which his detention or continued detention may be ordered under that subsection.
- (3) Where a young person detained in a remand home in pursuance of an interim order made under subsection (2) of the said section seventy-one proves to be of so unruly a character that he cannot safely be detained in a remand home, or of so depraved a character that he is not fit to be so detained, the court which made the order, or if application cannot conveniently be made to that court, the sheriff having jurisdiction in the place where that court sat, may, if it 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, revoke the order and order him to be detained in a remand centre.

**74 Rules and orders**

- (1) Any power of the Secretary of State to make rules under this Act shall be exercised by statutory instrument.
- (2) A draft of any statutory instrument containing rules made under section fifty-three of this Act shall be laid before Parliament.
- (3) Any power to make Orders in Council under this Act, and any power of the Secretary of State to make orders under this Act, shall include power to revoke or vary any such Order in Council or order by a subsequent Order in Council or order.

**75 Expenses and grants payable out of moneys provided by Parliament**

- (1) Any expenses of the Secretary of State under this Act and any expenses incurred by the Secretary of State—
  - (a) in the training of probation officers or of officers or servants serving in approved probation hostels or homes or in remand homes or approved schools, or of persons for appointment as probation officers, or as such officers or servants as aforesaid; or
  - (b) in the conduct of research into the causes of delinquency and the treatment of offenders, and matters connected therewith,



shall, to such amount as may be sanctioned by the Treasury, be defrayed out of moneys provided by Parliament.

- (2) Any expenses incurred by the General Board of Control for Scotland in connection with State Mental Hospitals or the management thereof, to such amount as may be sanctioned by the Treasury, and any sums by which grants payable in pursuance of regulations made under subsection (1) of section sixty-six of the National Health Service (Scotland) Act, 1947, are increased by reason of any provision of this Act, shall be defrayed out of moneys provided by Parliament.
- (3) There shall be paid out of moneys provided by Parliament—
- (a) towards the expenditure of local authorities under the Third Schedule to this Act;
  - (b) towards the expenditure of any society or person in enlarging, improving or carrying on approved probation hostels or homes or establishing, enlarging or improving premises which, when established, enlarged or improved, will be approved probation hostels or homes;
  - (c) towards the expenditure of any body approved by the Secretary of State in the training of probation officers or of persons for appointment as probation officers;
  - (d) towards the expenditure of any body approved by the Secretary of State in the training of officers or servants serving in any place in which offenders or persons awaiting trial may be detained or serving in approved probation hostels or homes or the training of persons for appointment as such officers, or servants;
  - (e) towards the expenditure of any society engaged in supervising or assisting persons released from a prison, Borstal institution or detention centre;
  - (f) towards the expenditure of any body or person approved by the Secretary of State in the conduct of research into the causes of delinquency and the treatment of offenders, and matters connected therewith,

such sums as the Secretary of State may with the approval of the Treasury direct, and subject to such conditions as he may with the like approval determine:

Provided that the sums paid as aforesaid towards any such expenditure as is mentioned in paragraph (a) of this subsection shall not exceed fifty per cent. of that expenditure.

- (4) The Secretary of State may, with the consent of the Treasury, make regulations providing for the deduction from any sums which would otherwise be paid out of moneys provided by Parliament to local authorities, whether under the last foregoing subsection or under the Children and Young Persons (Scotland) Act, 1937, of such amounts as may be prescribed by the regulations in respect of expenditure incurred by the Secretary of State—
- (a) in the training of any such officers, servants or other persons as are mentioned in subsection (1) of this section;
  - (b) in making any payments under paragraph (b) or paragraph (c) of the last foregoing subsection;
  - (c) in making payments under paragraph (d) of that subsection in respect of expenditure incurred in the training of officers or servants serving in remand homes or in approved probation hostels or homes, or the training of persons for appointment as such officers or servants:

Provided that the sums to be deducted in respect of any expenditure of the Secretary of State in pursuance of any such regulations as aforesaid shall not exceed fifty per cent. of that expenditure.

- (5) The conditions subject to which any sums are paid to any society or person under paragraph (b) of subsection (3) of this section may include conditions for securing the repayment in whole or in part of the sums received by the society or person if the probation hostel or home in respect of which those sums are paid ceases to be approved; and, notwithstanding anything in the constitution of the hostel or home or of the managers thereof, or in the trusts, if any, to which the property of the hostel or home or of the managers is subject, the managers and any persons who are trustees of any of the said property may accept those sums on those conditions, and execute any instrument required for carrying into effect those conditions, and shall be bound by those conditions and by any instrument so executed and have power to fulfil the conditions and the obligations created by the instrument.
- (6) There shall be paid out of moneys provided by Parliament any sums by which any grants under section one hundred and seven of the Children and Young Persons (Scotland) Act, 1937, towards the expenses of councils of counties and large burghs, are increased by reason of any provisions of this Act.
- (7) Any increase attributable to this Act in the sums payable out of moneys provided by Parliament under Part II of the Local Government Act, 1948, shall be defrayed out of moneys so provided.
- (8) All sums received by the Secretary of State under this Act (including any sums so received under arrangements made with respect to the cost of removing and maintaining persons removed from the Isle of Man or Channel Islands to institutions in Scotland under section sixty-two of this Act) shall be paid into the Exchequer.

## **76 Transitory provisions**

Without prejudice to the provisions of the Interpretation Act, 1889, with respect to repeals, the transitory provisions set out in the Tenth Schedule to this Act shall have effect for the purposes of the transition to the provisions of this Act from the law in force before the commencement of this Act.

## **77 Consequential and minor amendments**

The enactments mentioned in the first column of the Eleventh Schedule to this Act shall have effect subject to the amendments specified in the second column of that Schedule (being amendments consequential upon the foregoing provisions of this Act or relating to matters of minor detail).

## **78 Interpretation**

- (1) In this Act, unless the context otherwise requires, the following expressions have the meaning hereby respectively assigned to them, that is to say—
  - " Appropriate court " means a court named as such in pursuance of subsection (2) of section two of this Act or of the Second Schedule to this Act in a probation or supervision order or in an amendment of any such order made on a change of residence of a probationer or person under supervision;

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" Approved probation hostel " and " Approved probation home " have the meaning assigned to them by section twelve of this Act;

" Approved school " means a school approved under section eighty-three of the Children and Young Persons (Scotland) Act, 1937;

" Child " means a person under the age of fourteen years;

" Court " does not include a court-martial;

" Enactment " includes an enactment contained in a local Act and any order, regulation or other instrument having effect by virtue of an Act;

" England " includes Wales;

" Large burgh " and " Small burgh " have the like meanings as in the Local Government (Scotland) Act, 1947;

" Probationer " means a person for the time being under supervision by virtue of a probation order;

" Probation order " has the meaning assigned to it by section two of this Act;

" Probation period " means the period for which a probationer is placed under supervision by a probation order;

" Remand " means an order adjourning the proceedings or continuing the case and giving direction as to detention in custody or liberation during the period of adjournment or continuation and references to remanding a person or remanding in custody or on bail shall be construed accordingly;

" Remand home " means premises established or used by the council of a county or large burgh under the provisions of section eighty-one of the Children and Young Persons (Scotland) Act, 1937;

" Salaried probation officer " means a probation officer appointed under paragraph 3 of the Third Schedule to this Act;

" Sentence " includes an order for imprisonment pronounced by any court whether civil or criminal, an order for detention in a detention centre, an order for custody in a remand home under section fifty-eight of the Children and Young Persons (Scotland) Act, 1937, and an order sending an offender to an approved school;

" Supervision order " has the meaning assigned to it by section seventy-two of this Act;

" Voluntary probation officer " means a person (other than a salaried probation officer) named in a probation order as a person (whether alone or jointly with a salaried probation officer) under whose supervision the probationer is to be;

" Whole time probation officer " means a probation officer who devotes substantially his whole time to the duties of his office;

" Young, person " means a person who is not less than fourteen but under seventeen years of age.

- (2) Any reference in this Act to a previous sentence of imprisonment shall be construed as including a reference to a previous sentence of penal servitude; any such reference to a previous sentence of Borstal training shall be construed as including a reference to a previous sentence of detention in a Borstal institution; and any such reference to a previous conviction or sentence shall be construed as a reference to a previous conviction by a court in any part of Great Britain and to a previous sentence passed by any such court.

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- (3) Where the age of any person at any time is material for the purposes of any provision of this Act, or of any Order in Council made thereunder, regulating the powers of a court, his age at the material time shall be deemed to be or to have been that which appears to the court after considering any available evidence to be or to have been his age at that time.
- (4) References in this Act to an offence punishable with imprisonment shall be construed, in relation to any offender, without regard to any prohibition or restriction imposed by or under this Act upon the imprisonment of offenders of his age.
- (5) For the purposes of this Act, except subsection (8) of section two thereof, where a probation order has been made on appeal, the order shall be deemed to have been made by the court from which the appeal was brought.
- (6) References in this Act to any enactment shall, unless the context otherwise requires, be construed as references to, that enactment as amended by any subsequent enactment including this Act.
- (7) References in the Prisons (Scotland) Act, 1877, to a general or special rule shall be construed as references to a rule made under section fifty-three of this Act.

## **79 Short title, commencement, extent and repeals**

- (1) This Act may be cited as the Criminal Justice (Scotland) Act, 1949, and, save as otherwise expressly provided, shall extend to Scotland only.
- (2) This Act shall come into operation on such day as His Majesty may by Order in Council appoint:

Provided that different days may be appointed for the purposes of different provisions of this Act, and any reference in any provision of this Act to the commencement of this Act shall, unless otherwise provided by any such Order, be construed as a reference to the commencement of that provision.
- (3) The enactments specified in the Twelfth Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule but without prejudice to the provisions of section seventy-six of this Act; and Regulation 93A of the Defence (General) Regulations, 1939, and Regulation 14 of the Defence (Price Control) Regulations, 1945, shall cease to have effect.

## SCHEDULES

### FIRST SCHEDULE

Section 2.

#### FORM OF PROBATION ORDER

In the Court at on .  
The Court [being satisfied that the accused (*here insert name and address*) has committed the offence with which he is charged] or (as the case may be) in view of the conviction of the accused (*here insert name and address*) and being of the opinion that having regard to the circumstances, including the nature of the offence and the character of the said A.B. it is expedient to make a probation order under the Criminal Justice (Scotland) Act, 1949, containing the under-noted requirements, and the said A.B. who resides [*or is to reside*] in the probation area having expressed his willingness to comply with the said requirements, therefore orders that the said A.B. be under the supervision of probation officer of the said probation area of [*or under the supervision of a probation officer to be nominated by the court in the said probation area*] for a period of months from the date hereof, and that the said A.B. shall comply with the following requirements, namely—

1. To be of good behaviour.
2. To conform to the directions of the probation officer as to conduct.
3. (*Here insert any additional requirements.*)

Signed

Date

### SECOND SCHEDULE

Sections 2, 4.

#### DISCHARGE AND AMENDMENT OF PROBATION ORDERS

##### *Discharge*

- 1 A probation order may on the application of the probation officer or of the probationer be discharged—
  - (a) by the appropriate court, or
  - (b) if no appropriate court has been named in the original or in any amending order, by the court which made the order.

##### *Amendment*

- 2 (1) If the court by which a probation order was made, or the appropriate court is satisfied that the probationer proposes to change or has changed his residence from the probation area named in the order to another probation area, the court may, and if

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application is made in that behalf by the probation officer shall, by order, amend the probation order by (a) substituting for the probation area named therein that other probation area, and (6) naming the appropriate court to which all the powers of the court by which the order was made shall be transferred, and which shall appoint a probation officer or officers for the aforesaid other probation area in lieu of the probation officer or officers named in the order.

- (2) The court to be named as the appropriate court in any amendment of a probation order in pursuance of the last foregoing sub-paragraph shall be a court exercising jurisdiction in the place where the probationer resides or is to reside and shall be a sheriff court, a justice of the peace court or a burgh or police court according as the probation order was made by a sheriff court, a justice of the peace court or a burgh or police court:

Provided that—

- (i) if there is no justice of the peace court or burgh or police court as the case may be exercising jurisdiction in the said place the court to be so named shall be the sheriff court; and
  - (ii) if the probation order contains requirements which in the opinion of the court cannot be complied with unless the probationer continues to reside in the probation area named in the order, the court shall not amend the order as aforesaid, unless in accordance with the following provisions of this Schedule, it cancels those requirements or substitutes therefor other requirements which can be so complied with.
- (3) Where a probation order is amended under this paragraph, the clerk of the court amending it shall send to the clerk of the appropriate court, four copies of the order together with such documents and information relating to the case as the court amending the order considers likely to be of assistance to the appropriate court, and the clerk of that court shall send one copy of the probation order to the probation committee of the substituted probation area, and two copies to the probation officer appointed by the appropriate court, one of which the probation officer shall give to the probationer.
- (4) The foregoing provisions of this paragraph shall in the case where the probation order was made by the High Court of Justiciary have effect subject to the following modifications—
- (a) the Court shall not name an appropriate court, but may substitute for the probation officer or officers named in the order another probation officer or other probation officers, and any salaried probation officer so substituted shall be selected from among the salaried probation officers for the area in which the probationer is to reside;
  - (b) the clerk of justiciary shall send to the clerk of the probation committee for the area in which the probationer is to reside three copies of the amending order together with such documents and information relating to the case as is likely to be of assistance to the committee, and the clerk of the committee shall send two copies of the amending order to the probation officer named therein, one of which the probation officer shall give to the probationer.

- 3 Without prejudice to the provisions of the last foregoing paragraph, the court by which a probation order was made or the appropriate court may, upon application made by the probation officer or by the probationer, by order amend a probation order by cancelling any of the requirements thereof or by inserting therein (either in addition to or in substitution for any such requirement) any requirement which

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could be included in the order if it were then being made by that court in accordance with the provisions of sections two and three of this Act:

Provided that—

- (a) the court shall not amend a probation order by reducing . the probation period, or by extending that period beyond the end of three years from the date of the original order;
- (b) the court shall not so amend a probation order that the probationer is thereby required to reside in an approved probation hostel or home, or in any other institution or place, or to submit to treatment for his mental condition, for any period or periods exceeding twelve months in all;
- (c) the court shall not amend a probation order by inserting therein a requirement that the probationer shall submit to treatment for his mental condition unless the amending order is made within three months after the date of the original order.

4 Where the medical practitioner by whom or under whose direction a probationer is being treated- for his mental condition in pursuance of any requirement of the probation order is of opinion—

- (a) that the treatment of the probationer should be continued beyond the period specified in that behalf in the order; or
- (b) that the probationer needs different treatment, being treatment of a kind to which he could be required to submit in pursuance of a probation order; or
- (c) that the probationer is not susceptible to treatment; or
- (d) that the probationer does not require further treatment,

or where the practitioner is for any reason unwilling to continue to treat or direct the treatment of the probationer, he shall make a report in writing to that effect to the probation officer and the probation officer shall apply to the court which made the order or to the appropriate court for the variation or cancellation of the requirement.

#### *General*

5 Where the court which made the order or the appropriate court proposes to amend a probation order under this Schedule, otherwise than on the application of the probationer, it shall cite him to appear before the court; and the court shall not amend the probation order unless the probationer expresses his willingness to comply with the requirements of the order as amended:

Provided that this paragraph shall not apply to an order cancelling a requirement of the probation order or reducing the period of any requirement, or substituting a new probation area for the probation area named in the probation order.

6 On the making of an order discharging or amending a probation order, the clerk of the court shall forthwith give copies of the discharging or amending order to the probation officer; and the probation officer shall give a copy to the probationer and to the person in charge of any institution in which the probationer is or was required by the order to reside.

7 Subsection (9) of section two of this Act shall apply to any order made under this Schedule by virtue of which a probationer is required to reside in an institution or place as it applies to a probation order made under that section.

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## THIRD SCHEDULE

Section 11.

## ADMINISTRATIVE PROVISIONS AS TO PROBATION

*Probation Areas*

- 1 (1) Subject as hereinafter provided each large burgh and each county inclusive of every small burgh situate therein shall be a probation area:
- Provided that the Secretary of State, if the circumstances seem to him to render such a course expedient, may by order direct that any two or more of the areas aforesaid be combined in whole or in part to form one probation area or that any county (inclusive as aforesaid) be divided into two or more probation areas.
- (2) Before making an order under the preceding sub-paragraph, the Secretary of State shall give to each sheriff having jurisdiction in any part of the area to which the proposed order will apply and to the council of any county or burgh to which the proposed order will apply, an opportunity of making any representations which they may desire to make with respect to the proposed order.
- (3) An order made under sub-paragraph (1) of this paragraph may be amended or revoked by a subsequent order and the provisions of sub-paragraph (2) of this paragraph shall apply in relation to any such subsequent order.

*Probation and Case Committees*

- 2 (1) There shall be a probation committee for each probation area.
- (2) The probation committee shall consist (in addition to the ex officio members under the next succeeding sub-paragraph) of such number of persons as may be prescribed (not being less than five nor, except where in the opinion of the Secretary of State the circumstances of the area otherwise require, more than fifteen), and such persons (of whom at least one shall be a woman) shall be appointed, in accordance with rules made by the Secretary of State, by the local authority for the probation area, or where the probation area comprises in whole or in part the areas of two or more local authorities, by those local authorities.
- (3) The sheriff of each county wholly or partly comprised in a probation area, and any one or more sheriffs-substitute having jurisdiction in any such county whom the sheriff may nominate for the purpose, and the stipendiary magistrate for any burgh wholly or partly comprised in a probation area shall be members ex officio of the probation committee for that area.
- 3 (1) It shall be the duty of every probation committee—
- (a) to appoint sufficient salaried probation officers for their probation area, subject, in the case of such classes or descriptions of probation officers as may be prescribed, to the approval of the appointment by the Secretary of State;
  - (b) to pay to the probation officers appointed for their area such remuneration, allowances and expenses as may be prescribed;
  - (c) to provide for the efficient carrying out of the work of probation officers and to supervise such work and to receive reports by such officers;
  - (d) to make such payments and to such persons as may be prescribed in respect of persons under the supervision of probation officers, being persons



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- required by a probation order or supervision order to reside in any place otherwise than for the purpose of their submitting to treatment for their mental condition as voluntary or resident patients; and
- (e) to perform such other duties in connection with the work of probation officers as may be prescribed.
- (2) Nothing in the last foregoing sub-paragraph shall require the probation committee for any area to appoint a whole-time probation officer for any area if it is shown to the satisfaction of the Secretary of State that such appointment is unnecessary.
- (3) The same person may be appointed to be a salaried probation officer for two or more probation areas.
- (4) It shall be competent for a probation committee to appoint in accordance with rules made by the Secretary of State one or more case committees and to delegate thereto any of their functions relating to the supervision of the work of probation officers.
- (5) A probation committee may, in such cases and in such manner as may be prescribed, give financial and other assistance to persons under the supervision of probation officers appointed for their area.

#### *Duties of Probation Officers*

- 4 It shall be the duty of probation officers to supervise the probationers and other persons placed under their supervision and to advise, assist and befriend them; to inquire, in accordance with any directions of the court, into the circumstances or home surroundings of any person with a view to assisting the court in determining the most suitable method of dealing with his case; to advise, assist and befriend, in such cases and in such manner as may be prescribed, persons who have been released from custody; and to perform such other duties as may be prescribed or may be imposed by any enactment.

#### *Selection of Probation Officers*

- 5 (1) Where the circumstances permit, the court shall nominate a probation officer who is a woman to supervise a female offender.
- (2) The court by which a probation order has been made, shall where the probation officer named in the order dies or is unable for any reason to carry out his duties, or where the court for any reason considers it desirable that another probation officer should be nominated in place of the officer named in the order, nominate another probation officer to act under the order.
- (3) The foregoing provisions of this paragraph shall with any necessary modifications apply to the appropriate court in like manner as they apply to the court by which a probation order was made.

#### *Expenses*

- 6 (1) The sums required to meet any expenses incurred by a probation committee under the Local Government Act, 1948, or under the provisions of this Schedule, or in accordance with rules made thereunder or in respect of (a) the remuneration or expenses of any probation officer or any clerk appointed to assist a probation officer in the performance of his duty or (b) the inclusion of any salaried whole-time probation officer or any such clerk as aforesaid in a superannuation fund maintained

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under the Local Government Superannuation (Scotland) Act, 1937, or under a local Act scheme within the meaning of that Act, shall be defrayed in accordance with rules made under this Schedule by the local authority in whose area the probation area is situated.

- (2) Where a probation officer is appointed for more than one probation area, any expenses incurred under this Schedule in respect of the remuneration, expenses or superannuation of such officer or of any clerk appointed to assist him in the performance of his duty shall be apportioned between the probation committees for the several probation areas for which he is appointed, in such manner as may be agreed upon by the probation committees after consultation with the local authorities affected, or, in default of agreement, according to the rateable valuation in the valuation rolls of the respective probation areas.
- (3) Where a probation area is situated in the area of two or more local authorities, the sums to be defrayed as aforesaid shall be apportioned between the several authorities in such manner as may be agreed upon between them, or, in default of agreement according to the rateable valuation in the valuation rolls of the respective areas of the local authorities so far as within the probation area.

#### *General*

- 7 The Secretary of State may make rules—
- (a) regulating the constitution, procedure, powers and duties of probation committees and case committees and the appointment and tenure of office of the members thereof;
  - (b) regulating the qualifications, manner of appointment, conditions of service and duties of probation officers;
  - (c) fixing scales of salaries and remuneration of salaried probation officers, and of expenses to be allowed to salaried and voluntary probation officers;
  - (d) regulating the expenditure which may be incurred by probation and case committees and the manner in which such expenditure is to be defrayed;
  - (e) requiring probation committees to furnish reports with respect to the work or duties of their probation officers;
  - (f) empowering local authorities to appoint the clerk and other officers (other than probation officers) of probation committees;
  - (g) for the auditing of the accounts of probation committees; and
  - (h) for prescribing anything else which under the provisions of this Schedule may be prescribed.
- 8 In this Schedule—
- the expressions " county " and " county council " mean, in the case of counties combined for the purposes mentioned in subsection (1) of section one hundred and eighteen of the Local Government (Scotland) Act, 1947, the combined county and the joint county council;
- the expression " local authority " means in the case of a large burgh, the town council and in the case of a county inclusive of any small burgh situate therein, the county council;
- the expression " prescribed " means prescribed by rules made by the Secretary of State;
- the expression " sheriff " does not include sheriff substitute.

## FOURTH SCHEDULE

Section 20.

### BORSTAL TRAINING

- 1 A person sentenced to Borstal training shall be detained in a Borstal institution for such period, not extending beyond three years after the date of his sentence, as the Secretary of State may determine, and shall then be released.
- 2 A person shall, after his release from a Borstal institution and until the expiration of a period of three years from the date of his sentence or the expiration of one year from the date of his release, whichever is the earlier, be under the supervision of such society or person as may be specified in a notice to be given to him by the Secretary of State on his release, and shall, while under that supervision, comply with such requirements as may be so specified:  
  
Provided that the Secretary of State may at any time modify or cancel any of the said requirements or order that a person who is under supervision as aforesaid shall cease to be under supervision.
- 3 If the Secretary of State is satisfied that a person who is under supervision after his release from a Borstal institution under paragraph 1 of this Schedule has failed to comply with any requirement for the time being specified in the notice given to him under paragraph 2 of this Schedule, the Secretary of State may by order recall him to a Borstal institution; and thereupon he shall be liable to be detained in the Borstal institution until the expiration of one year from the date of his being taken into custody under the order and, if at large, shall be deemed to be unlawfully at large:  
  
Provided that—
  - (a) any such order shall, at the expiration of a period of three years from the date of the sentence, cease to have effect unless the person to whom it relates is then in custody thereunder; and
  - (b) the Secretary of State may at any time release a person who is detained in a Borstal institution under this paragraph; and the foregoing provisions of this Schedule shall apply in the case of a person so released as they apply in the case of a person released under paragraph 1 of this Schedule.
- 4 If any person while under supervision, or after his recall to a Borstal institution, as aforesaid, is sentenced by a court in any part of Great Britain to corrective training or Borstal training or to penal servitude or detention in a Borstal institution, his original sentence of Borstal training shall cease to have effect; and if any such person is so sentenced to imprisonment, any period for which he is imprisoned under that sentence shall count as part of the period for which he is liable to detention in a Borstal institution under his original sentence,
- 5 The Secretary of State in exercising his functions under this Schedule shall consider any report made to him by a visiting committee on the advisability of releasing a person from a Borstal institution.

## FIFTH SCHEDULE

Section 21.

### RELEASE ON LICENCE OF PERSONS SENTENCED TO CORRECTIVE TRAINING OR PREVENTIVE DETENTION

- 1 The Secretary of State may release on licence a person sentenced to corrective training or preventive detention after he has served such portion of his sentence as may be determined in accordance with rules made under section fifty-three of this Act or at any time.
- 2 A person shall, after his release on licence under paragraph 1 of this Schedule and until the expiration of his sentence, comply with such requirements as may be specified in the licence, including, if the Secretary of State thinks it expedient, a requirement that he shall be under the supervision of such society or person as may be so specified :
- Provided that the Secretary of State may at any time modify or cancel any of the said requirements.
- 3 If before the expiration of his sentence the Secretary of State is satisfied that a person released on licence under paragraph 1 of this Schedule has failed to comply with any requirement for the time being specified in the licence, the Secretary of State may by order recall him to a prison; and thereupon he shall be liable to be detained in the prison until the expiration of his sentence, and, if at large, shall be deemed to be unlawfully at large.
- 4 The Secretary of State may release on licence a person detained in a prison under the last foregoing paragraph at any time before the expiration of his sentence; and the foregoing provisions of this Schedule shall apply in the case of a person released under this paragraph as they apply in the case of a person released under paragraph 1 of this Schedule.
- 5 If any person while released on licence, or after he is recalled to a prison, as aforesaid, is sentenced by a court in any part of Great Britain to corrective training or preventive detention, the sentence by virtue of which he is on licence or has been recalled shall cease to have effect; and if any such person is so sentenced to imprisonment or penal servitude, any period for which he is imprisoned under that sentence shall count as part of the period for which he is liable to detention under the original sentence.

## SIXTH SCHEDULE

Section 22.

### REGISTRATION OF ADDRESS AND REPORTING AT POLICE STATIONS BY DISCHARGED PRISONERS

- 1 (1) Any person to whom this Schedule applies shall—
- (a) register at an appointed police station in any police area in which he is from time to time residing the address of his residence;
  - (b) report once in each month, on such day as may be directed by or on behalf of the chief officer of police, at the police station at which his address for the time being is registered.

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- (2) Where any person to whom this Schedule applies changes his residence he shall, on registering his new address under this paragraph, state the address which was last registered by him thereunder.
    - (3) Any such registration and report as aforesaid shall be effected in person before the officer in charge of the police station:  
  
Provided that any such report may, if permission in that behalf is granted by or on behalf of the chief officer of police, be made in writing.
  - 2 (1) If any person fails without reasonable excuse to comply with any of the requirements of the foregoing paragraph, he shall be guilty of an offence and liable on summary conviction thereof to imprisonment for a term not exceeding six months:  
  
Provided that—
    - (a) in proceedings for a failure to register an address it shall be a defence for the accused to prove either that—
      - (i) being on a journey to a particular destination he remained no longer in the place in which he failed to register his address than was reasonably necessary for the purposes of that journey; or
      - (ii) his absence from his registered address was temporary and that he kept the officer in charge of the police station at which that address was registered sufficiently informed of his whereabouts; and
    - (b) in proceedings for a failure to report it shall be a defence for the accused to prove that, being temporarily absent from his registered address on the day on which he was directed to report, he personally presented himself and reported on that day at a police station within the police area in which he then was and stated his registered address.
  - (2) A person to whom this Schedule applies who is reasonably suspected of having committed an offence under this paragraph may be arrested without warrant by any constable.
  - (3) A person charged with an offence under this paragraph may be tried in the place in which he was arrested or in the place in which the offence is alleged to have been committed or, if the offence consists of a failure to report in writing to a police station, in the place in which the police station is situated.
- 3 (1) Any appointment, direction or permission purporting to be signed by or on behalf of a chief officer of police and to have been made or given for the purposes of this Schedule shall, in proceedings under the last foregoing paragraph of this Schedule, be sufficient evidence that the appointment, direction or permission thereby made or given was duly made or given by or on behalf of the chief officer of police.
- (2) A certificate purporting to be signed by an officer in charge of a police station and certifying that it appears from the records kept at that police station that a person has failed to register an address or make a report or has registered a particular address at that police station shall, in any such proceedings as aforesaid, be sufficient evidence of the facts so certified.
- (3) A certificate purporting to be signed by or on behalf of the Secretary of State and certifying that he has received a notice given pursuant to paragraph (b) of subsection (2) of section twenty-two of this Act to the effect that a person has failed to comply with any requirement under that subsection shall, in any such proceedings

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- as aforesaid, be sufficient evidence of the notice having been duly given and of the contents of the notice.
- 4 (1) For the purposes of this Schedule, a person shall be deemed to reside at any house or other place of whatever description at which he spends a night.
- (2) In this Schedule the following expressions have the meaning hereby respectively assigned to them, that is to say:—
- " Appointed police station " means a police station appointed for the purposes of this Schedule by the chief officer of police of the police area in which the police station is situated;
- " Chief officer of police " and " police area " have the same meaning respectively as in section thirty of the Police Pensions Act, 1921;
- " Registered address ", in relation to any person, means the address which is for the time being the address last registered by him in accordance with this Schedule.
- 5 It shall be the duty of a chief officer of police to appoint a sufficient number of police stations in his area for the purposes of this Schedule.

## SEVENTH SCHEDULE

Sections 39, 46.

### FORMS OF NOTICES TO ACCUSED IN CRIMINAL PROCEEDINGS

#### PROCEEDINGS ON INDICTMENT

##### FORM No. 1. Notice of Previous Convictions.

A.B. Take notice that in the event of your being convicted of the charge of \_\_\_\_\_ in the indictment to which this notice is attached, it is intended to place before the Court the undernoted previous convictions applying to you as aggravations of the said charge.

Date.	Place of trial.	Court.	Offence.	Sentence.
(Date)				C.D.

#### SUMMARY PROCEEDINGS.

##### FORM No. 2. Notice as to penalty for statutory offence.

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A.B. Take notice that in the event of your being convicted of the charge[s] of contravening (*give reference to sections of Acts or Orders*) in the complaint preferred against you at my instance you will be liable to the penalties set forth in the said section[s] [*or in section of the said Act*] namely (*set forth shortly the penalties.*)

(Date) C.D. Procurator Fiscal  
[or Burgh Prosecutor]  
[or Justice of the Peace Fiscal]

FORM No. 3. Notice of Previous Convictions in charge of Statutory Offence.

A.B. Take notice that in the event of your being convicted of the charge of contravening (*give reference to the section of Act or Order*) in the complaint preferred against you at my instance it is intended to place before the Court the undernoted previous convictions applying to you and you will be liable (in respect that the offence is a second [*or third*] offence) to the penalties set forth in the said section[s] [*or in section of the said Act*] namely (*set forth shortly the penalties.*)

*List of previous convictions.*

Date.	Place of trial.	Court.	Offence.	Sentence.

(Date) C.D. Procurator Fiscal  
[or Burgh Prosecutor]  
[or Justice of the Peace Fiscal]

FORM No. 4. Notice of previous convictions in charge of Common Law offence.

A.B. Take notice that in the event of your being convicted of the charge[s] of in the complaint preferred against you at my instance it is intended to place before the Court the following previous convictions applying to you :—

Date.	Place of trial.	Court.	Offence.	Sentence.

(Date) C.D. Procurator Fiscal  
[or Burgh Prosecutor]  
[or Justice of the Peace Fiscal]

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## EIGHTH SCHEDULE

Section 56.

### RELEASE OF YOUNG OFFENDERS FROM PRISON ON LICENCE

1 A person released on licence under section fifty-six of this Act shall until the expiration of his sentence be under the supervision of such society or person as may be specified in the licence and shall comply with such other requirements as may be so specified:

Provided that the Secretary of State may at any time modify or cancel any such requirements.

2 If before the expiration of his sentence the Secretary of State is satisfied that a person released as aforesaid has failed to comply with any requirement for the time being specified in the licence he may by order recall him to a prison; and thereupon he shall be liable to be detained in prison until the expiration of his sentence and, if at large, shall be deemed to be unlawfully at large.

3 The Secretary of State may release on licence a person detained in a prison under the last foregoing paragraph at any time before the expiration of his sentence; and the foregoing provisions of this Schedule shall apply in the case of a person released under this paragraph as they apply in the case of a person released under section fifty-six of this Act.

4 Where the unexpired part of the sentence of a person released under the said section fifty-six is less than six months, the provisions of this Schedule shall apply to him subject to the following modifications—

- (a) the period for which he is under supervision under paragraph 1, and is liable to recall under paragraph 2, shall be a period of six months from the date of his release under the said section fifty-six;
- (b) if he is recalled under paragraph 2, the period for which he may be detained thereunder shall be whichever is the shorter of the following, that is to say—
  - (i) the remainder of the said period of six months; or
  - (ii) the part of his sentence which was unexpired on the date of his release under the said section fifty-six reduced by any time during which he has been so detained since that date;

and he may be released on licence under paragraph 3 at any time before the expiration of that period.

## NINTH SCHEDULE

Sections 20, 56 and 62.

### PROVISIONS RELATING TO PERSONS IN ENGLAND AFTER DISCHARGE FROM PRISONS, ETC., IN SCOTLAND

1 Where any person serving a term of imprisonment for life has been released on licence under subsection (1) of section fifty-seven of this Act, he may be recalled under subsection (2) of that section notwithstanding that he is for the time being in England; and in relation to any such persons, while in England, the said subsection (2) shall extend to England accordingly.

2 Where any person sentenced to Borstal training under this Act, or who is required by virtue of any enactment to be treated as if he had been so sentenced, is released from a Borstal institution, he shall continue to be under supervision, and may be



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- recalled, in accordance with the provisions of the Fourth Schedule to this Act, notwithstanding that he is for the time being in England and in relation to any such person, while in England, the provisions of that Schedule (other than paragraph 1 thereof) shall extend to England accordingly.
- 3 Where any person sentenced under this Act to corrective training or preventive detention, or required by virtue of section sixty-two of this Act to be treated as if he had (been so sentenced, is released on licence under paragraph 1 of the Fifth Schedule to this Act, any requirements of the licence shall continue in force, and he may be recalled under the said Fifth Schedule, notwithstanding that he is for the time being in England; and in relation to any such person, while in England, the provisions of that Schedule (except paragraph 1 thereof) shall extend to England accordingly.
- 4 Where any person serving a sentence of imprisonment is released on licence under subsection (2) of section fifty-six of this Act, he shall continue to be under supervision, and may be recalled, in accordance with the provisions of the Eighth Schedule to this Act, notwithstanding that he is for the time (being in England; and in relation to any such person, while in England, the provisions of that Schedule shall extend to England accordingly.
- 5 Where, under section twenty-two of this Act, any person convicted of an offence is ordered to be subject to the provisions of that section, he shall remain so subject notwithstanding that he is for the time being in England; and in relation to any such person, while in England, the provisions of that section and of the Sixth Schedule to this Act shall extend to England accordingly.

## TENTH SCHEDULE

Section 76.

### TRANSITORY PROVISIONS

- 1 Where in any proceedings commenced before the date of the commencement of this Act no sentence, probation order, order discharging the offender absolutely or other order finally disposing of the case has been passed or made, the court shall have power to pass or make any sentence or order which it could have passed or made if the proceedings had been commenced after the said date.
- 2 (1) Any person who immediately before the commencement of this Act was undergoing or liable to undergo a term of penal servitude under a sentence passed by a court in any part of Great Britain or as a condition of a pardon granted by His Majesty for an offence for which he was sentenced to death, or in consequence of the forfeiture or revocation of a licence granted in any part of Great Britain under the Penal Servitude Acts, 1853 to 1891, shall, if he is or ought to be in custody in Scotland at the commencement of this Act, be treated thereafter as if he had been sentenced to, or were undergoing or liable to undergo, imprisonment and not penal servitude for that term.
- (2) Where any person who having been sentenced to penal servitude for life, or while undergoing penal servitude for life as a condition of a pardon granted as aforesaid, is at the commencement of this Act the holder of a licence granted under the Penal Servitude Acts, 1853 to 1891, which has not been forfeited or revoked, he shall be deemed to have been released on licence under section fifty-seven of this Act.

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- (3) In the case of a person who is deemed by virtue of the last foregoing sub-paragraph to have been released on licence under section fifty-seven of this Act, the Secretary of State may, without recalling him to prison, substitute for the licence granted under the Penal Servitude Acts, 1853 to 1891, a licence under the said section fifty-seven.
- (4) Where any person who having been sentenced to penal servitude for a term less than life is at the commencement of this Act the holder of a licence granted as aforesaid under the Penal Servitude Acts, 1853 to 1891, which has not been forfeited or revoked, he shall be -treated as if his sentence had expired.
- 3 Any person who has been sentenced to imprisonment with hard labour for a term which has not expired at the commencement of this Act shall, for the remainder of that term, be treated as though he had been sentenced to imprisonment without hard labour; but nothing in this paragraph shall affect any disability or disqualification attaching to him by virtue of his sentence.
- 4 (1) Any person who is at the commencement of this Act detained in custody under a sentence of preventive detention shall for the remainder of the period for which he was sentenced to preventive detention be treated as if he had been sentenced to preventive detention under this Act; and the provisions of this Act relating to preventive detention shall apply to him accordingly.
- (2) Where a person having been sentenced to a term of preventive detention is at the commencement of this Act absent from prison by virtue of a licence granted under section fourteen of the Prevention of Crime Act, 1908, the provisions of Part II of that Act shall continue to apply to him; but if before the expiration of the term his licence is revoked or forfeited the said provisions shall cease to apply, and he shall for the remainder of the term be treated as if he had been sentenced to preventive detention under this Act; and the provisions of this Act relating to preventive detention shall apply to him accordingly.
- (3) Where a person has been sentenced to penal servitude for a term which has not expired at the commencement of this Act, and is liable to undergo a period of preventive detention on the determination of the sentence of penal servitude, there shall be substituted for the sentence of preventive detention a sentence of preventive detention under this Act for a like period; and the provisions of this Act relating to preventive detention shall apply to that person accordingly.
- 5 (1) Any person who, having been sentenced to detention in a Borstal institution, is or ought to be immediately before the commencement of this Act detained in Scotland in a Borstal institution, or in a prison awaiting removal to such an institution, or then holds a licence in force under section five of the Prevention of Crime Act, 1908, or is under the supervision of the Secretary of State under section six of that Act, shall be deemed to have been sentenced to Borstal training under this Act, or to be under supervision under the Fourth Schedule to this Act; and in its application to him the said Fourth Schedule shall have effect as if for the references therein to three years there were substituted references to the term of the sentence of detention in a Borstal institution.
- (2) Any person to whom Part I of the Prevention of Crime Act, 1908, applied immediately before the commencement of this Act by reason of his transfer from a prison to a Borstal institution under section three of that Act shall be treated as if he were transferred under the provisions of this Act on the date of the commencement of this Act.

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- 6 (1) Where at the commencement of this Act a person is subject to the supervision of the police pursuant to the direction of a court in Scotland given under section eight of the Prevention of Crimes Act, 1871, the period for which he is under supervision shall expire at the end of twelve months from the commencement of this Act unless it shall have expired sooner.
- (2) Any period of supervision as aforesaid exceeding twelve months which has not begun before the commencement of this Act shall by virtue of this Act be reduced to twelve months.
- (3) The Secretary of State may substitute for any such direction, the period of supervision under which has not expired at the commencement of this Act, an order that the person subject to supervision under the direction shall, during the remainder of the period for which he would be liable to such supervision, be subject to the provisions of section twenty-two of this Act.
- 7 (1) Any probation order made under the Probation of Offenders Act, 1907, by virtue of which a person is under supervision at the commencement of this Act shall be deemed to have been made under this Act:
- Provided that where any requirement as to residence in such an order has been in operation for more than six months the probation officer shall apply to the court for a review of the requirement for the purpose of considering whether the requirement should be cancelled or the period thereof reduced, and where the requirement has been in operation for more than twelve months the probation -officer shall report the case to the court with a view to an order terminating the requirement.
- (2) Any order made by the Secretary of State under paragraph (ii) of subsection (1) of section two of the Probation of Offenders (Scotland) Act, 1931, for the combination or division of areas shall have effect as if made under the Third Schedule to this Act.
- (3) The members of a probation committee appointed for any area in accordance with rules under section three of the aforesaid Act of 1931 holding office at the commencement of this Act shall, pending an appointment of a committee under paragraph 2 of the Third Schedule to this Act be deemed to be the probation committee for that area under this Act and the salaried probation officers appointed under the said Act for any area and holding office at the commencement of this Act shall be deemed to have been appointed under paragraph 3 of the said Schedule.
- 8 For the purposes of this Act—
- (a) prison rules made under any enactment repealed by this Act and regulations made under section four of the Prevention of Crime Act, 1908, shall be deemed to have been made under section fifty-three of this Act; and
- (b) rules made under the Probation of Offenders Act, 1907, or the Probation of Offenders (Scotland) Act, 1931, shall be deemed to have been made under paragraph 7 of the Third Schedule to this Act.
- 9 In relation to any person who—
- (a) having been sentenced to a term of preventive detention is at the commencement of this Act absent from prison by virtue of a licence granted under section fourteen of the Prevention of Crime Act, 1908; or
- (b) is at the commencement of this Act subject to the supervision of the police pursuant to the direction of any court under section eight of the Prevention of Crimes Act, 1871,

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the provisions of section twenty-one of the Firearms Act, 1937, shall have effect as originally enacted and not as amended by this Act.

ELEVENTH SCHEDULE

Section 77.

CONSEQUENTIAL AND MINOR AMENDMENTS

<i>Act to be Amended.</i>	<i>Amendment.</i>
<p><a href="#">The Prisons (Scotland) Act, 1877.</a> 40 &amp; 41 Vict. c. 53.</p>	<p>In section twenty-eight, the words from " may from time to time " to " convicted " criminal prisoners, and " shall cease to have effect.</p> <p>Sections thirty-seven, forty-eight to fifty and fifty-two shall be omitted.</p> <p>In section seventy-one, for the definition of the expression " burgh " the following definition shall be substituted " Burgh " shall have the same meaning as in " the Local Government (Scotland) Act, " 1947 ".</p>
<p><a href="#">The Criminal Procedure (Scotland) Act, 1887.</a> 50 &amp; 51 Vict. c. 35.</p>	<p>In section sixty-three, for the words " such "extract " there shall be substituted the words " an extract of such ".</p>
<p><a href="#">The Summary Jurisdiction (Scotland) Act, 1908.</a> 8 Edw. 7. c. 65.</p>	<p>In section thirty-four, for the words " such " previous conviction shall be set forth in " the complaint and " there shall be substituted the words " and such previous " conviction is set forth in the notice " referred to in subsection (4) of section " forty-six of the Criminal Justice (Scotland) Act, 1949, then"; in paragraph (1) after the word " tendered " and in paragraph (2) after the word " thereof" there shall be inserted the words " the " prosecutor shall place the notice before " the judge and" ; the words in the said paragraph (2) " after conviction " shall be omitted ; and in paragraph (8), after the word " herein ", there shall be inserted the words " or in section forty- " six of the Criminal Justice (Scotland) " Act, 1949 ".</p>
<p><a href="#">The Mental Deficiency and Lunacy (Scotland) Act, 1913.</a> 3 &amp; 4 Geo. 5. c. 38.</p>	<p>In section three, in subsection (1) in sub-paragraph (ii) of paragraph (c) for the words " a certified industrial school " there shall be substituted the words " a " school approved under section eighty" three of the Children and Young " Persons (Scotland) Act, 1937." and in sub-paragraph (iii) of the said paragraph for the words from "under"</p>

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*Act to be Amended.*

*Amendment.*

going a sentence" to " department "of a prison" there shall be substituted the words " detained (other- " wise than while awaiting trial or " sentence or under civil process) in " a prison or other institution to which " the Prisons (Scotland) Acts 1860 to 1926 " apply, or, in a remand home or who is " detained in a school approved under " section eighty-three of the Children and "Young Persons (Scotland) Act, 1937, " a mental hospital, an inebriate refor-" matory or a State Mental Hospital ".

In section five, for the words from " (a) " under an order" to " inebriate reforma-" tory " there shall be substituted the words " under an order made by the " sheriff—

- “(a) on a petition presented under this Act (hereinafter referred to as a judicial order) ; or
- (b) in pursuance of section ten of this Act in the case of a defective detained in a prison or other institution to which the Prisons (Scotland) Act, 1860 to 1926, apply, or in a remand home, or in a school approved under section eighty-three of the Children and Young Persons (Scotland) Act, 1937 or in an inebriate reformatory or who is detained in a State Mental Hospital”

In section seventeen, in subsection (1), the words " or the Secretary for Scotland ", shall be omitted.

In section thirty-three, in subsection (2), the words from " or " , to the end of the subsection shall be omitted.

In section thirty-four, for subsection (2), there shall be substituted the following subsection:—

- “(2) Where the order is made in pursuance of section ten of this Act—
  - (a) if the order is in respect of a person detained in a prison or other institution to which

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*Act to be Amended.*

*Amendment.*

The Criminal Justice Administration Act,  
1914.  
4 & 5 Geo. 5. c. 58.

the Prisons (Scotland) Acts, 1860 to 1926, apply, or in a remand home, or in an inebriate reformatory or who is . detained in a State Mental Hospital, that person shall for the purposes of the foregoing section be presumed to have resided in the place where the offence was, or was alleged to have been, committed, unless it be proved that he resided in some other place ;

- (b) if the order is in respect of a person in a school approved under section eighty-three of the Children and Young Persons (Scotland) Act, 1937, that person shall for the purposes of the foregoing section be deemed to have resided in the place (if any) determined to have been his place of residence for the purposes of his committal to such school.”

The Firearms Act, 1937.  
1 Edw. 8 & Geo. 6. c. 12.

In section four, in subsection (1) after the word " prison " there shall be inserted the words " or a detention centre " and after the word " imprisonment " there shall be added the words " or detention " .

In section twenty-one, in subsection (1) after the words " penal servitude " there shall be inserted the words " preventive " detention or corrective training " , in subsection (2) for paragraph (a) there shall be substituted the following paragraph :—

- “(a) is the holder of a licence issued under section fifty-six or fifty-seven of the Criminal Justice (Scotland) Act, 1949, or the Fifth or Eighth Schedule to that Act, or section fifty-seven of the Children and Young Persons (Scotland) Act, 1937 ; or”

and in paragraph (b) the words " is " subject to the supervision of the police, " or " shall cease to have effect and after the word "

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*Act to be Amended.*

The Children and Young Persons (Scotland)  
Act, 1937.  
1 Edw. 8 & 1 Geo. 6. c. 37.

*Amendment.*

firearm" there shall be inserted the words " or is subject to a " probation order containing a require-" ment that he shall not possess, use or " carry a firearm " .

In section twenty-five, in subsection (1) for the words " penal servitude " there shall be substituted the words " preventive " detention, corrective training", the words "to be subject to police super-" vision or " shall cease to have effect, and after the word " firearm" in the first place where it occurs there shall be inserted the words " or is subject to a " probation order containing a require-" ment that he shall not possess, use or " carry a firearm " .

For section forty-three there shall be substituted the following section :—

“43 (1) Where a child or young person is to be brought before a court notification of the day and hour when, and the nature of the charge or other grounds on which, the child or young person is to be so brought shall be sent by the responsible person—

- (a) in the case where the child or young person is charged with an offence, to the probation officer or one of the probation officers for the probation area in which the court will sit; and
- (b) in the case where the child or young person is brought before the court as being in need of care or protection, to the local authority for the area in which he is resident, or if it is not known where he is resident, to the local authority for the area or any one of the areas in which the circumstances justifying the application to the court are alleged to have arisen.

In this subsection the expression ' responsible person ' means, in the case where the child or young person is charged with an offence, the chief constable of the area in which the

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*Act to be Amended.*

*Amendment.*

offence is alleged to have been committed, and in any other case the person (not being a local authority) bringing the child or young person before the court.

- (2) Where a probation officer or a local authority has or have received a notification under the last foregoing subsection, or where a local authority themselves bring a child or young person before a court as being in need of care or protection, the probation officer or, as the case may be, the children's officer appointed by such local authority under section forty-one of the Children Act, 1948, shall, except in cases which appear to him to be of a trivial nature, make such investigations and render available to the court such information as to home surroundings as appear to him will assist the court and shall apply to the appropriate education authority for a report (which that authority shall have a duty to give) furnishing such information as to the school record, health and character of the child or young person, and, in proper cases, as to the availability of approved schools, as shall appear to the education authority to be likely to assist the court."

In section fifty-three, for subsection (3) there shall be substituted the following subsection:

- “(3) The attainment of the age of seventeen years by a probationer shall not deprive a juvenile court of jurisdiction to enforce his attendance and deal with him in respect of any failure to comply with the requirements of the probation order or the commission of a further offence or to amend or discharge the probation order.”

In section fifty-eight, for the words " this " Act " there shall be substituted the words "



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*Act to be Amended.*

*Amendment.*

section eighteen of the Criminal Justice (Scotland) Act, 1949.

In section fifty-nine, in subsection (1) the words "damages or expenses" and the words "or awarded" wherever they occur, shall cease to have effect.

In section sixty-two, in paragraph (a) of the proviso the words "undergoing" detention in a Borstal Institution or "was" shall cease to have effect and at the end of the proviso there shall be added the following paragraph:—

“(c) in the case of a person who was undergoing detention in a Borstal institution, than the end of the period for which he would have been liable to be detained therein.”

In section sixty-three, after the word "enactment", there shall be inserted the words "whether passed before or after" the commencement of this Act.

In section seventy-four, in proviso (a) to subsection (2) for the words "conditions" of a bond there shall be substituted the words "requirements of a supervision order or probation order".

In section eighty-one, after subsection (2), there shall be inserted the following subsection:—

“(2A) A local authority may contribute towards the expenditure incurred by any society or person in establishing, enlarging or improving an institution for the purpose of its being used, in accordance with an arrangement with the authority, as a remand home for the area of that authority, such sums, and subject to such conditions, as the authority think fit; and subsection (5) of section seventy-five of the Criminal Justice (Scotland) Act, 1949, shall apply to any sums so paid as it applies to the payments referred to in that subsection.”

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

<i>Act to be Amended.</i>	<i>Amendment.</i>
<p>The National Service Act, 1947. 10 &amp; 11 Geo. 6. c. 31.</p> <p>The Police Pensions Act, 1948. 11 &amp; 12 Geo. 6. c. 24.</p> <p>The Criminal Justice Act, 1948. 11 &amp; 12 Geo. 6. c. 58.</p>	<p>In section eighty-two, for subsection (3) there shall be substituted the following subsection:—</p> <p style="padding-left: 40px;">“(3) The Secretary of State shall cause remand homes to be inspected and may make rules for their inspection, regulation and management, and for the classification, treatment, employment, discipline and control of persons detained in custody therein, and for the visitation of such persons from time to time by persons appointed in accordance with the rules.”</p> <p>In section eighty-six, in subsection (1) for the words " and may (any other Act to " the contrary notwithstanding) be " brought " there shall be substituted the words " and brought back to his school; " and (notwithstanding any enactment " regulating the time within which and " the court before which proceedings " may be brought) any such person may, " whether or not he is brought back, be " brought, with the authority of the " Secretary of State, at any time " .</p> <p>In section ninety-four, in subsection (5) for the words " conditions of a bond " there shall be substituted the words " require- " ments of a supervision order or proba- " tion order " .</p> <p>In the First Schedule, in paragraph 1 after the words " preventive detention " there shall be inserted the words " correc- " tive training " and for the words " Borstal Institution" there shall be substituted the words " detention centre ; " or was or would, if he had not been " unlawfully at large, have been detained " in a Borstal institution " .</p> <p>In section four, in subsection (1) after the words " penal servitude " there shall be inserted the words " preventive deten- " tion or corrective training " .</p> <p>For section nine there shall be substituted the following section :—</p>

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

*Act to be Amended.*

*Amendment.*

**“9 Probation orders relating to persons residing in Scotland.**

- (1) Where the court by which a probation order is made under section three of this Act is satisfied that the offender resides or will reside in Scotland, subsection (2) of that section shall not apply to the order, but the order shall specify as the appropriate court for the purposes of this section a court of summary jurisdiction (which, in the case of an offender convicted on indictment, shall be the sheriff court) having jurisdiction in the place in Scotland in which the offender resides or will reside.
- (2) Where a probation order has been made under section three of this Act and the supervising court is satisfied that the probationer proposes to reside or is residing in Scotland, the power of that court to amend the order under the First Schedule to this Act shall include power to amend it by substituting for the provisions required by subsection (2) of the said section three the provisions required by subsection (1) of this section ; and the court may so amend the order without summoning the probationer and without his consent.
- (3) Notwithstanding anything in the foregoing provisions of this Part of this Act, an order as made or amended under this section shall not require the offender to reside in any institution, or to submit to treatment for his mental condition, but without prejudice to any power of a court in Scotland to impose any such requirement under the next following subsection.
- (4) Subsections (1) to (3) of section five and subsections (1) and (2) of section six of this Act shall not apply to any order made or amended under this section ; but the provisions of the Criminal Justice (Scotland)

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

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*Act to be Amended.*

*Amendment.*

Act, 1949 (except paragraph (b) of subsection (2) of section five and section six of that Act) shall apply to the order as if it were a probation order made under section two of that Act and as if the court specified in the order as the appropriate court had been named as such under subsection (2) of that section.

(5) If in the case of a probation order made or amended under this section the appropriate court (as defined by the Criminal Justice (Scotland) Act, 1949) is satisfied that the probationer has failed to comply with any requirement of the probation order, the court may, instead of dealing with him in any manner authorised by the said Act, commit him to custody or release him on bail until he can be brought or appear before the court in England by which the probation order was made, and, if it so commits him or releases him on bail,—

(a) the court shall send to the said court in England a certificate certifying that the probationer has failed to comply with such of the requirements of the probation order as may be specified in the certificate, together with such other particulars of the case as may be desirable;

(b) that court shall have the same powers as if the probationer had been brought or appeared before it in pursuance of a warrant or summons issued under subsection (1) of section six of this Act ;

and a certificate purporting to be signed by the clerk of the appropriate court shall be admissible as evidence of the failure before the court which made the probation order.

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

*Act to be Amended.*

*Amendment.*

- (6) In relation to a probation order made or amended under this section, the appropriate court (as defined by the Criminal Justice (Scotland) Act, 1949) shall have jurisdiction for the purposes of subsection (1) of section eight of this Act; and paragraph (a) of the proviso to subsection (3) of that section shall not apply to any summons or warrant issued under that section by that court.
- (7) The court by which a probation order is made or amended under this section shall send three copies of the order as made or amended to the clerk of the court specified in the order as the appropriate court, together with such documents and information relating to the case as it considers likely to be of assistance to that court; and subsection (6) of section three of this Act, or paragraph 6 of the First Schedule to this Act, as the case may be, shall not apply to any such order.
- (8) Where a probation order which is amended under subsection (2) of this section is an order to which the provisions of this Act apply by virtue of section seven of the Criminal Justice (Scotland) Act, 1949 (which relates to probation orders under that Act relating to persons residing in England), then, notwithstanding anything in that section or this section, the order shall, as from the date of the amendment, have effect in all respects as if it were an order made under section two of that Act in the case of a person residing in Scotland, and as if the court specified as the appropriate court in the order as so amended had been named as such under subsection (2) of the said section two.”

In section twenty-three after subsection (2) there shall be inserted the following subsection:—

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

*Act to be Amended.*

*Amendment.*

“(3) For the purposes of subsections (1) and (2) of section twenty-one of this Act a certificate purporting to be signed by or on behalf of the Lord Advocate that an offence is punishable on indictment in Scotland with imprisonment for a term of two years or more shall be evidence of the matter so certified.”

At the end of section fifty-two there shall be added the following subsection :—

“(5) Rules made under this section may provide for the temporary release of persons serving a sentence of imprisonment, corrective training, preventive detention, or Borstal training.”

In section fifty-seven, in subsection (1), for the words from " subject to such conditions " to the end of the subsection there shall be substituted the words " subject to compliance with such conditions, if any, as the Secretary of State may from time to time determine. "

In section sixty-one, in subsection (5), for the words from " The provisions of Part I " to " that Schedule " there shall be substituted " The provisions of the Seventh Schedule to this Act. "

At the end of section sixty-five there shall be added the following subsection:—

“(4) For the purposes of this section a person who, after being temporarily released in pursuance of rules made under subsection (5) of section fifty-two of this Act, is at large at any time during the period for which he is liable to be detained in pursuance of his sentence shall be deemed to be unlawfully at large if the period for which he was temporarily released has expired or if an order recalling him has been made by the Prison Commissioners in pursuance of the rules.”

In the Eighth Schedule, after sub-paragraph (2) of paragraph 1, there shall be inserted the following sub-paragraph :—

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

*Act to be Amended.*

*Amendment.*

“(2A) In the case of a person who is deemed by virtue of the last foregoing sub-paragraph to have been released on licence under section fifty-seven of this Act, the Secretary of State may, without recalling him to prison, substitute for the licence granted under the Penal Servitude Acts, 1853 to 1891, a licence under the said section fifty-seven.”

TWELFTH SCHEDULE

Section 79.

ENACTMENTS REPEALED

Session and Chapter.	Short Title.	Extent of Repeal.
3 Geo. 4. c. 114	The Hard Labour Act, 1822.	The whole Act.
5 Geo. 4. c. 84	The Transportation Act, 1824.	The whole Act.
11 Geo. 4 & 1 Will. 4. c. 39.	The Transportation Act, 1830.	Section two.
4 & 5 Will. 4. c. 67.	The Transportation Act, 1834.	The whole Act.
5 & 6 Vict. c. 61	The South Australia Act, 1842.	The whole Act.
6 & 7 Vict. c. 7	The Transportation Act, 1843.	The whole Act.
10 & 11 Vict. c. 67.	The Transportation Act, 1847.	Section two.
16 & 17 Vict. c. 99.	The Penal Servitude Act, 1853.	The whole Act.
20 & 21 Vict. c. 3.	The Penal Servitude Act, 1857.	The whole Act except sections two and six.
23 & 24 Vict. c. 105.	The Prisons (Scotland) Act, 1860.	Sections seventy-two and seventy-three.
27 & 28 Vict. c. 47.	The Penal Servitude Act, 1864.	The whole Act.
34 & 35 Vict. c. 112.	The Prevention of Crimes Act, 1871.	Sections three to five and eight.
40 & 41 Vict. c. 53.	The Prisons (Scotland) Act, 1877.	Section six.

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

Session and Chapter.	Short Title.	Extent of Repeal.
42 & 43 Vict. c. 55.	The Prevention of Crime Act, 1879.	<p>In section ten, the words " and enforcement of hard labour ".</p> <p>Sections fourteen, fifteen, twenty-seven.</p> <p>In section twenty-eight, the words from " may from time to time " to " convicted criminal prisoners, and ".</p> <p>Sections twenty-nine, thirty-seven, forty-four to fifty, fifty-two, fifty-eight and sixty-four.</p>
50 & 51 Vict. c. 35.	The Criminal Procedure (Scotland) Act, 1887.	<p>The whole Act.</p> <p>In section nineteen, the words " previous conviction or " and the words from " every such conviction " to the end of the section.</p> <p>In section twenty-seven, the words " and any extract convictions that are to be produced " and the words from " and where " to the end of the section.</p> <p>In section twenty-nine, the words " and extract convictions relative thereto ".</p> <p>In section thirty-one, the words " other than productions to prove previous convictions ".</p> <p>In sections sixty-three, sixty-four and sixty-five the words " Extracts of " .</p> <p>In section sixty-six, the words from " such conviction shall be held" to " notice is given ".</p> <p>In Schedule A, in the first of the examples of indictments, from " add in case " to " as the case may be ".</p>



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

Session and Chapter.	Short Title.	Extent of Repeal.
54 & 55 Vict. c. 69.	The Penal Servitude Act, 1891.	In section one, in subsection (2) the words "with or without hard labour". Sections two to six and ten.
7 Edw. 7. c. 17	The Probation of Offenders Act, 1907.	The whole Act.
8 Edw. 7. c. 59	The Prevention of Crime Act, 1908.	The whole Act.
8 Edw. 7. c. 65	The Summary Jurisdiction (Scotland) Act, 1908.	In section seven, in paragraph (1) the words "with or without hard labour". In section eleven in paragraph (4) the words "with or without hard labour". In section twelve, the words "with or without hard labour". In section forty-three, the words "with or without hard labour" and paragraph (2). In section seventy-seven, in paragraph (4) the words "and forty-eight". In Schedule B, in sections sixty-three, sixty-four and sixty-five of the Criminal Procedure (Scotland) Act, 1887 as applied to summary proceedings the words "Extracts of". In Schedule C, the words from "A statutory charge" to the end of the List of Previous Convictions. Schedule E, so far as it relates to the probation of offenders.
9 Edw. 7. c. 2	The Prisons (Scotland) Act, 1909.	The whole Act.
3 & 4 Geo. 5. c. 38.	The Mental Deficiency and Lunacy (Scotland) Act, 1913.	Section nine, so far as it relates to persons charged with offences. In section twenty-five, in subsection (2), the proviso.

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

Session and Chapter.	Short Title.	Extent of Repeal.
4 & 5 Geo. 5. c. 58.	The Criminal Justice Administration Act, 1914.	Sections seven to nine, eleven and twenty-six.  In section forty-two, paragraphs (8) and (11).
15 & 16 Geo. 5. c. 81.	The Circuit Courts and Criminal Procedure (Scotland) Act, 1925.	In section three, the words from " omitting so far as necessary " to " convictions and ".
16 & 17 Geo. 5. c. 15.	The Criminal Appeal (Scotland) Act, 1926.	In section nine, subsections (3) and (5).  In section sixteen, the words from " petition for" to " reference to the " and the word "to" in the second place where it occurs.
16 & 17 Geo. 5. c. 58.	The Penal Servitude Act, 1926.	The whole Act.
21 & 22 Geo. 5. c. 30.	The Probation of Offenders (Scotland) Act, 1931	The whole Act.
23 & 24 Geo. 5. c. 20.	The False Oaths (Scotland) Act, 1933.	In section two, the words " with or without hard labour ".
25 & 26 Geo. 5. c.32.	The Criminal Lunatics (Scotland) Act, 1935.	In section one, subsection (1) and sections two, three and seven.
26 Geo. 5 & 1 Edw. 8. c. 16.	The Coinage Offences Act, 1936.	In section twelve, in subsection (1) the words "penal servitude or ".
1 Edw. 8 & 1 Geo. 6. c. 12.	The Firearms Act, 1937.	In section twenty-one, in paragraph (b) of subsection (2) the words " is subject to the supervision of the police or "  In section twenty-five, in subsection (1) the words "to be subject to police supervision or ".
1 Edw. 8 & 1 Geo. 6. c. 37.	The Children and Young Persons (Scotland) Act, 1937-	Section forty-one. Section fifty-six.  In section fifty-seven, in subsection (2) the words " notwithstanding anything in the other provisions of this Act".

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

Session and Chapter.	Short Title.	Extent of Repeal.
		In section sixty-two, in proviso (a), the words "undergoing detention in a Borstal Institution or was".
		Section sixty-four.
		In section seventy, subsection (3).
		In section eighty-six, in subsection (1) the words from "and that court" to the end of the subsection.
		In the Second Schedule, in paragraph 8 the words from "and that court" to the end of the paragraph.
1 & 2 Geo. 6. c. 48.	The Criminal Procedure (Scotland) Act, 1938.	Section ten.
9 & 10 Geo. 6. c. 72.	The Education (Scotland) Act, 1946.	In section one hundred and forty-two, in subsection (1), the words "subsection (3) of section fifty-six and".
11 & 12 Geo. 6. c. 38.	The Companies Act, 1948	Section four hundred and forty-three.
11 & 12 Geo. 6. c. 43.	The Children Act, 1948.	The Third Schedule, so far as it relates to section forty-three of the Children and Young Persons (Scotland) Act, 1937.
11 & 12 Geo. 6. c. 58.	The Criminal Justice Act, 1948.	Section ten.  In section seventy-one, subsection (4) : section eighty-one so far as it relates to sections ten and seventy-one.  Part I of the Seventh Schedule.

TABLE OF STATUTES REFERRED TO IN THIS ACT

Short Title.	Session and Chapter.
Treason Act, 1790	30 Geo. 3. c. 48.
Treason Act, 1814	54 Geo. 3. c. 146.

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

Short Title.	Session and Chapter.
Lands Clauses (Consolidation) (Scotland) Act, 1845	8 & 9 Vict. c. 18.
Lunacy (Scotland) Act, 1857	20 & 21 Vict. c. 71.
Prisons (Scotland) Act, 1860	23 & 24 Vict. c. 105.
Lunacy (Scotland) Act, 1862	25 & 26 Vict. c. 54.
Lunacy (Scotland) Act, 1866	29 & 30 Vict. c. 51.
Criminal and Dangerous Lunatics (Scotland) Amendment Act, 1871	34 & 35 Vict. c. 55.
Prevention of Crimes Act, 1871	34 & 35 Vict. c. 112.
Prisons (Scotland) Act, 1877	40 & 41 Vict. c. 21.
Peterhead Harbour of Refuge Act, 1886	49 & 50 Vict. c. 49.
Criminal Procedure (Scotland) Act, 1887	50 & 51 Vict. c. 35.
Bail (Scotland) Act, 1888	51 & 52 Vict. c. 36.
Interpretation Act, 1889	52 & 53 Vict. c. 68.
Penal Servitude Act, 1891	54 & 55 Vict. c. 69.
Probation of Offenders Act, 1907	7 Edw. 7. c. 17.
Post Office Act, 1908.	8 Edw. 7. c. 48.
Prevention of Crime Act, 1908	8 Edw. 7. c. 59.
Summary Jurisdiction (Scotland) Act, 1908	8 Edw. 7. c. 65.
Mental Deficiency and Lunacy (Scotland) Act, 1913	3 & 4 Geo. 5. c. 38.
Police Pensions Act, 1921	11 & 12 Geo. 5. c. 31.
Criminal Appeal (Scotland) Act, 1926	16 & 17 Geo. 5. c. 15.
Probation of Offenders (Scotland) Act, 1931	21 & 22 Geo. 5. c. 30.
False Oaths (Scotland) Act, 1933	23 & 24 Geo. 5. c. 20.
Criminal Lunatics (Scotland) Act, 1935	25 & 26 Geo. 5. c. 32.
Firearms Act, 1937	1 Edw. 8 & 1 Geo. 6. c. 12.
Children and Young Persons (Scotland) Act, 1937	1 Edw. 8 & 1 Geo. 6. c. 37.
Local Government Superannuation (Scotland) Act, 1937	1 Edw. 8 & 1 Geo. 6. c. 69.
Education (Scotland) Act, 1946	9 & 10 Geo. 6. c. 72.
National Health Service (Scotland) Act, 1947	10 & 11 Geo. 6. c. 27.
Acquisition of Land (Authorisation Procedure) (Scotland) Act, 1947	10 & 11 Geo. 6. c. 42.
Local Government (Scotland) Act, 1947	10 & 11 Geo. 6. c. 43.

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Short Title.	Session and Chapter.
Local Government Act, 1948	11 & 12 Geo. 6. c. 26.
Criminal Justice Act, 1948	11 & 12 Geo. 6. c. 58.