



# Criminal Procedure (Scotland) Act 1975

## 1975 CHAPTER 21

### PART I

#### SOLEMN PROCEDURE

#### PROCEDURE PRIOR TO TRIAL

*Arrest, Judicial Examination, Custody, Bail, Etc*

#### **12 Petitions for warrants**

Petitions for warrant to arrest and commit persons suspected of or charged with crime may set forth the charge in the forms set out in Schedule A to the Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form; and the provisions of sections 43 to 46 and 48 to 55 of this Act shall apply to any such petition as they apply to the indictment.

#### **13 Warrants for arrest of escaped prisoners and mental patients**

- (1) On an application being made to a sheriff or justice alleging that any person is—
  - (a) an offender unlawfully at large from a prison or other institution to which the Prison Act applies in which he is required to be detained after being convicted of an offence; or
  - (b) a convicted mental patient liable to be retaken under section 40 or 140 of the Mental Health Act 1959, section 36 or 106 of the Mental Health (Scotland) Act 1960 or section 30 or 108 of the Mental Health Act (Northern Ireland) 1961 (retaking of mental patients who are absent without leave or have escaped from custody);

the sheriff or justice may issue a warrant to arrest him and bring him before any sheriff.

- (2) Where a person is brought before a sheriff in pursuance of a warrant for his arrest under this section, the sheriff shall, if satisfied that he is the person named in the warrant and if satisfied as to the facts mentioned in paragraph (a) or (b) of the foregoing subsection,

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order him to be returned to the prison or other institution where he is required or liable to be detained or, in the case of a convicted mental patient, order him to be kept in custody or detained in a place of safety pending his admission to hospital.

(3) Section 139 of the Mental Health Act 1959, section 105 of the Mental Health (Scotland) Act 1960 and section 107 of the Mental Health Act (Northern Ireland) 1961 (custody, conveyance and detention of certain mental patients) shall apply to a convicted mental patient required by this section to be conveyed to any place or to be kept in custody or detained in a place of safety as they apply to a person required by or by virtue of the said Act of 1959, 1960 or 1961, as the case may be, to be so conveyed, kept or detained.

(4) In this section—

" convicted mental patient " means a person liable after being convicted of an offence to be detained under Part V of the Mental Health Act 1959, Part V of the Mental Health (Scotland) Act 1960, Part III of the Mental Health Act (Northern Ireland) 1961 or section 25, 175, 177 or 178 of this Act in pursuance of a hospital order or transfer direction together with an order or direction restricting his discharge ;

" place of safety " has the same meaning as in Part V of the said Act of 1959 or Part III of the said Act of 1961 or section 462 of this Act, as the case may be;

" Prison Act " means the Prison Act 1952, the Prisons (Scotland) Act 1952 or the Prison Act (Northern Ireland) 1953, as the case may be.

## 14 Warrant to search for or remove a child

(1) If, on an application to a justice by any person who, in the opinion of the justice, is acting in the interests of a child, it appears to the justice on information on oath that there is reasonable cause to suspect—

- (a) that the child has been or is being assaulted, ill-treated, or neglected in any place within the jurisdiction of the justice, in a manner likely to cause him unnecessary suffering or injury to health, or
- (b) that any offence mentioned in Schedule 1 to this Act has been or is being committed in respect of the child,

the justice may issue a warrant authorising any constable named therein to search for the child and, if it is found that he has been or is being assaulted, ill-treated or neglected in manner aforesaid, or that any such offence as aforesaid has been or is being committed in respect of him, to take him to and detain him in a place of safety, or authorising any constable to remove him with or without search to a place of safety and detain him there.

(2) A child shall not continue to be detained under the last foregoing subsection—

- (a) where the reporter considers the child does not require compulsory measures of care, or
- (b) after the day on which a children's hearing first sit to consider his case in pursuance of section 37(4) of the Social Work (Scotland) Act 1968, or
- (c) for a period exceeding seven days.

(3) A justice issuing a warrant under this section may by the same warrant cause any person accused of any offence in respect of the child to be apprehended and brought before the sheriff, and proceedings to be taken against him according to law.

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- (4) Any constable authorised by warrant under this section to search for or, with or without search, to remove any child may enter (if need be by force) any house, building, or other place specified in the warrant, and may remove him therefrom.
- (5) Every warrant issued under this section shall be addressed to and executed by a constable, who shall be accompanied by the person making the application if that person so desires, unless the justice by whom the warrant is issued otherwise directs, and may also, if the justice by whom the warrant is issued so directs, be accompanied by a duly qualified medical practitioner.
- (6) It shall not be necessary in any application, information or warrant under this section to name the child.

## **15 Sheriff's warrant may be executed out of district**

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

## **16 Backing of certain warrants from the Isle of Man**

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

## **17 Execution of Scottish warrants in England and vice versa**

- (1) A warrant issued in Scotland for the apprehension of a person charged with an offence may be executed in England by any constable acting within his police area; and subsections (3) and (4) of section 102 of the Magistrates' Courts Act 1952 (execution on Sunday and execution without possession of the warrant) shall apply to the execution in England of any such warrant.
- (2) A warrant issued in England for the arrest of a person charged with an offence may be executed in Scotland by any constable appointed for a police area in like manner as any such warrant issued in Scotland.
- (3) A warrant may be executed by virtue of this section whether or not it has been endorsed under section 14 or 15 of the Indictable Offences Act 1848.

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- (4) Nothing in this section affects the execution in Scotland of a warrant to which section 123 of the Bankruptcy Act 1914 applies.

## **18 Power of constable to take offenders into custody**

- (1) Without prejudice to any other powers of arrest, any constable may take into custody, without warrant—
- (a) any person who within his view commits any of the offences mentioned in Schedule 1 to this Act, if the constable does not know and cannot ascertain his name and address;
  - (b) any person who has committed, or whom he has reason to believe to have committed, any of the offences mentioned in Schedule 1 to this Act, if the constable does not know and cannot ascertain his name and address or has reasonable ground for believing that he will abscond.
- (2) Where, under the powers conferred by this section, a constable arrests any person without warrant, the superintendent or inspector of police or an officer of police of equal or superior rank, or the officer in charge of the police station to which the person is brought, shall, unless in his belief the release of the person would tend to defeat the ends of justice, or to cause injury or danger to the child (being a person under the age of 17 years) against whom the offence is alleged to have been committed, release the person arrested on his entering into an obligation to attend at the hearing of the charge or on his finding bail for such amount as may in the judgment of the officer of police be required to secure his attendance.

## **19 Prisoners before examination to have access to solicitor**

- (1) Where any person has been arrested on any criminal charge, such person shall be entitled immediately upon such arrest to have intimation sent to a solicitor that his professional assistance is required by such person, and informing him of the place to which such person is to be taken for examination.
- (2) Such solicitor shall be entitled to have a private interview with the person accused before he is examined on declaration, and to be present at such examination.
- (3) It shall be in the power of the sheriff or justice to delay such examination for a period not exceeding 48 hours from and after the time of such person's arrest, in order to allow time for the attendance of such solicitor.

## **20 Accused at examination need not emit a declaration**

- (1) Where the accused is brought before the sheriff for examination on any charge and he or his solicitor intimates that he does not desire to emit a declaration in regard to such charge, it shall be unnecessary to take a declaration, and the accused may be committed for further examination or until liberated in due course of law without a declaration being taken.
- (2) Where the accused does not desire to emit a declaration as aforesaid, that fact shall be recorded in the warrant of committal.
- (3) The foregoing provisions of this section shall not prejudice the right of the accused subsequently to emit a declaration on intimating to the prosecutor his desire to do so.

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- (4) The provisions of this section shall apply to procedure under indictment, without prejudice to the accused being tried summarily by the sheriff for any offence in respect of which he has been committed until liberated in due course of law.

## **21 Examination of accused on charges arising in different districts**

Where there are charges against the accused in different sheriff court districts he may be brought before the sheriff of any one of such districts at the instance of the procurator fiscal of such district for examination on all or any of such charges, and may be dealt with in every respect as if such charges had arisen in the district where he is examined, but without prejudice to the power of the Lord Advocate under section 5 of this Act to determine the court before which the accused shall be tried on such charges.

## **22 Committal until liberation in due course of law**

- (1) All informations shall be signed and no person shall be committed until liberated in due course of law for any crime or offence without a warrant in writing expressing the particular charge in respect of which he is committed.
- (2) Any such warrant for imprisonment which either proceeds on an unsigned information or does not express the particular charge shall be null and void.
- (3) The accused person shall immediately be given a true copy of the warrant for imprisonment signed by the messenger or executor of the warrant before imprisonment or the warder of the prison receiving the warrant.

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

- (1) Where a court remands or commits for trial or for sentence a person under 21 years of age who is charged with or convicted of an offence and is not released on bail, then, except as otherwise expressly provided by this section, the following provisions shall have effect, that is to say—
- (a) subject to the following paragraph, if he is under 16 years of age the court shall commit him to the local authority in whose area the court is situated, and the authority shall have the duty of placing him in a suitable place of safety chosen by the authority instead of committing him to prison ;
- (b) if he is a person of over 16 years of age, or a child under 16 years of age but over 14 years of age who is certified by the court to be unruly or depraved, and the court has been notified by the Secretary of State that a remand centre is available for the reception from that court of persons of his class or description, he shall be committed to a remand centre instead of being committed to prison.
- (2) Where any person is committed to a local authority or to a remand centre under any provision of this Act, that authority or centre shall be specified in the warrant, and he shall be detained by the authority or in the centre for the period for which he is committed or until he is liberated in due course of law.
- (3) Where any person has been committed to a local authority under any provision of this Act, the court by which he was committed, if the person so committed is not less than 14 years of age and it appears to the court that he is unruly or depraved, may revoke the commitment and commit the said person—

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

## **24 Committal of children to custody in place of safety**

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

Provided that in the case of a child over 14 years of age it shall not be obligatory on the court so to commit him if the court certifies that he is of so unruly a character that he cannot safely be so committed or that he is of so depraved a character that he is not a fit person to be so detained.

- (2) A commitment under this section may be varied, or, in the case of a child over 14 years of age, who proves to be of so unruly a character that he cannot safely be detained in such custody, or to be of so depraved a character that he is not a fit person to be so detained, revoked, by the court which made the order, or if application cannot conveniently be made to that court, by a sheriff sitting summarily having jurisdiction in the place where the court which made the order sat, and if it is revoked the child may be committed to prison.

## **25 Power of court to commit to hospital a person suffering from mental disorder**

- (1) Where a court remands or commits for trial a person charged with any offence who appears to the court to be suffering from mental disorder, and the court is satisfied that a hospital is available for his admission and suitable for his detention, the court may, instead of remanding him in custody, commit him to that hospital.
- (2) Where any person is committed to a hospital as aforesaid, the hospital shall be specified in the warrant and, if the responsible medical officer is satisfied that he is suffering from mental disorder of a nature or degree which warrants his admission to a hospital under Part IV of the Mental Health (Scotland) Act 1960, he shall there be detained for the period for which he is remanded or the period of committal, unless before the expiration of that period he is liberated in due course of law.
- (3) When the responsible medical officer has examined the person so detained he shall report the result of that examination to the court and, where the report is to the effect that the person is not suffering from mental disorder of such a nature or degree as aforesaid, the court may commit him to any prison or other institution to which he might have been committed had he not been committed to hospital or may otherwise deal with him according to law.
- (4) No person shall be committed to a hospital under this section except on the written or oral evidence of a medical practitioner.

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## **26 Bail competent before committal**

- (1) All crimes and offences, except murder and treason, shall be bail able.
- (2) Any person accused of a crime which is by law bail able shall be entitled immediately after he has been brought before a justice for examination on declaration to apply to such justice or to the sheriff for liberation on his finding caution in common form to appear at any diet to which he may be cited for further examination, or in order to answer any indictment or complaint which may be served upon him:

Provided that the prosecutor shall be entitled to be heard against any such application.

- (3) The sheriff or justice shall be entitled in his discretion to refuse such application before the person accused is committed until liberated in due course of law.
- (4) Where an accused person is admitted to bail without being committed until liberated in due course of law, it shall not be necessary so to commit him, and it shall be lawful to serve him with an indictment or complaint without his having been previously so committed.

## **27 Renewal of application for bail after committal**

Where bail is refused before committal until liberation in due course of law on an application made under the last foregoing section, the application for bail may be renewed after such committal.

## **28 Admission or refusal of bail after committal**

- (1) Any sheriff having jurisdiction to try the offence or to commit the accused until liberated in due course of law may, at his discretion, on the application of any person who has been committed until liberation in due course of law for any crime or offence, except murder or treason, and after opportunity shall have been given to the prosecutor to be heard thereon, admit or refuse to admit such person to bail.
- (2) Such application shall be disposed of within 24 hours after its presentation to the sheriff, failing which the accused shall be forthwith liberated.

## **29 Amount of bail**

Any sheriff admitting a person to bail shall fix the bail at such an amount as he may consider sufficient to ensure the appearance of such person to answer at all diets to which he may be cited on the charge.

## **30 Application for review of court's decision on bail and caution**

- (1) The following provisions of this section shall apply where a court has refused to admit a person to bail or, where a court has so admitted a person, the bail fixed in his case has not been found.
- (2) A court shall, on the application of any such person as aforesaid, have power to review its decision to admit to bail or its decision as to the bail fixed and may, on cause shown, admit the person to bail or, as the case may be, fix bail at a lower amount.

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- (3) An application under this section, where it relates to the original decision of the court, shall not be made before the fifth day after that decision and, where it relates to a subsequent decision, before the fifteenth day thereafter.
- (4) Nothing in the provisions of this section shall affect any right of a person to appeal against the decision of a court in relation to admitting to bail or to the bail fixed.
- (5) In the foregoing provisions of this section, any reference to bail includes a reference to caution for interim liberation and any reference to admitting to bail shall include a reference to ordering the finding of caution as aforesaid.

### **31 Appeal in respect of bail**

- (1) Where an application for bail after commitment until liberation in due course of law is refused by any sheriff, or where the applicant is dissatisfied with the amount of bail fixed, he may appeal to the High Court, and the High Court may, in its discretion, order intimation to the Lord Advocate.
- (2) Where an application for bail is granted by any sheriff, whether before or after commitment until liberation in due course of law, the public prosecutor, if dissatisfied with the decision allowing bail, or with the amount of bail fixed, may appeal to the High Court, and the applicant shall not be liberated until the appeal by the prosecutor is disposed of, except as provided in section 33 of this Act.
- (3) Written notice of appeal shall be immediately given to the opposite party by the party appealing under this section.
- (4) An appeal under this section shall be disposed of by the High Court or any Lord Commissioner of Justiciary in court or in chambers after such inquiry and hearing of parties as shall seem just.
- (5) In the event of the appeal of the public prosecutor under this section being refused, the court may award expenses against him.

### **32 No fees exigible against accused in respect of application for bail**

No clerks' fees, court fees, or other fees or expenses shall be exigible from, or be awarded against, an accused in respect of his application for bail, or of the appeal of such application to the High Court.

### **33 Liberation of applicant when appeal by public prosecutor**

- (1) When an appeal is taken by the public prosecutor either against the grant of bail or against the amount fixed, the applicant to whom bail has been granted shall, if the bail fixed shall have been found by him, be liberated after 72 hours, or where the place of application is in the Outer Hebrides, or in Orkney or Zetland, 96 hours from the granting of the application, whether the appeal be disposed of or not, unless the High Court shall grant an order for his further detention in custody. In computing the aforesaid periods, Sundays and public holidays, whether general or court holidays, shall be excluded.
- (2) Notice by telegraph to the governor of the prison of the issue of such an order within the time aforesaid bearing to be sent by the Clerk of Justiciary or the Crown Agent



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shall be sufficient warrant for the detention of the applicant pending arrival of the order in due course of post.

**34 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.

**35 Right of Lord Advocate and High Court to admit a person to bail**

Nothing contained in this Act shall affect the right of the Lord Advocate or the High Court to admit to bail any person charged with any crime or offence.

**36 Citation of persons liberated on bail at domiciles specified in bail bonds**

All bail bonds whatsoever received in order to obtain the liberation of accused persons from custody shall specify the domicile at which such persons may thereafter be cited for trial before any criminal court.

**37 Power to order parent to give security for child's good behaviour**

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

**38 Separation of children from adults at courts, etc.**

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

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

- (1) Where a child is charged with any offence, his parent or guardian may in any case, and shall, if he can be found and resides within a reasonable distance, be required to attend at the court before which the case is heard or determined during all the stages of the proceedings, unless the court is satisfied that it would be unreasonable to require his attendance.

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- (2) Where the child is arrested, the constable by whom he is arrested or the officer of police in charge of the police station to which he is brought shall cause the parent or guardian of the child, if he can be found, to be warned to attend at the court before which the child will appear.
- (3) For the purpose of enforcing the attendance of a parent or guardian and enabling him to take part in the proceedings and enabling orders to be made against him, rules may be made under section 457 of this Act, for applying, with the necessary adaptations and modifications, such of the provisions of Part II of this Act as appear appropriate for the purpose.
- (4) The parent or guardian whose attendance shall be required under this section shall be the parent or guardian having the actual possession and control of the child:  
  
Provided that, if that person is not the father, the attendance of the father may also be required.
- (5) The attendance of the parent of a child shall not be required under this section in any case where the child was before the institution of the proceedings removed from the custody or charge of his parent by an order of a court.

#### **40 Notice to local authority of charge against a child**

- (1) Where a child is to be brought before a court, notification of the day and hour when, and the nature of the charge on which, the child is to be so brought shall be sent by the chief constable of the area in which the offence is alleged to have been committed to the local authority for the area in which the court will sit.
- (2) Where a local authority have received a notification under the foregoing subsection they shall make such investigations and render to the court a report which shall contain such information as to the home surroundings of the child as appear to them will assist the court in the disposal of his case, and the report shall contain information, which the appropriate education authority shall have a duty to supply, as to the school record, health and character of the child.