



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.

The Indictment

41 Indictment forms

All prosecutions for the public interest before the High Court or before the sheriff sitting with a jury shall proceed on indictment in name of Her Majesty's Advocate, and such indictment may be in the forms set out in Schedule A to the Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournment under this Act or as nearly as may be in such form and shall be signed by the Lord Advocate or one of his deputies, or by a procurator fiscal, and the words " By Authority of Her Majesty's Advocate " shall be prefixed to the signature of such procurator fiscal.

42 Procedure on resignation, death or removal of Lord Advocate

All indictments which have been raised by any Lord Advocate shall continue in force and effect notwithstanding his resignation, and may be taken up and proceeded with by his successor; and where any Lord Advocate shall die during his tenure of office, or otherwise be removed from office, it shall be lawful to indict persons accused in name

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of the Solicitor General then in office until another Lord Advocate is appointed, and the advocates depute and procurators fiscal shall have power, notwithstanding such death or removal from office of the Lord Advocate, to take up and proceed with any indictments already raised in name of such Lord Advocate, and any indictments that may be raised in name of such Solicitor General.

43 Naming of accused

A person accused may be named and designed in an indictment according to the existing practice, or he may be named by the name given by him and designed as of the place given by him as his residence when he is examined on declaration, or he may be named by the name under which he is committed until liberated in due course of law, and it shall not be necessary to set forth any other name or names by which he may be known, or any other address or designation.

44 Nomen juris unnecessary

It shall not be necessary in any indictment to specify by any nomen juris the crime which is charged, but it shall be sufficient that the indictment sets forth facts relevant and sufficient to constitute an indictable crime.

45 Case of two or more persons charged

When in any indictment two or more persons are charged together with committing a crime, it shall not be necessary to allege that " both and each or one or other," or that " all and each or one or more " of them committed the crime, or did or failed to do any particular act, but such alternatives shall be implied in all such indictments.

46 " Guilty, actor or art and part " unnecessary

It shall not be necessary to state in any indictment that a person accused is " guilty, actor or art and part," but such charge shall be implied in all indictments.

47 " All which or part " implied

The customary conclusion of indictments formerly in use, commencing with the words " All which or part thereof," shall be implied in all indictments though not set forth.

48 Qualifying words to be implied

It shall not be necessary in any indictment to allege that any act of commission or omission therein charged was done or omitted to be done " wilfully " or " maliciously," or " wickedly and feloniously," or " falsely and fraudulently," or " knowingly," or " culpably and recklessly," or " negligently," or in " breach of duty," or to use such words as " knowing the same to be forged," or " having good reason to know," or " well knowing the same to have been stolen," or to use any similar words or expressions qualifying any act charged, but such qualifying allegation shall be implied in every case.

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49 Quotation of statutes unnecessary

It shall not be necessary in an indictment for a crime punishable under any Act of Parliament to quote the Act of Parliament or any part of it, but it shall be sufficient to allege that the crime was committed contrary to such Act of Parliament, and to refer to the Act and any section of the Act founded on without setting forth the enactment at length.

50 Latitude as to time and place

- (1) The latitude formerly in use to be taken in stating time in indictments at the instance of Her Majesty's Advocate shall be implied in all statements of time where an exact time is not of the essence of the charge.
- (2) The latitude formerly in use to be taken in stating any place in such indictments by adding to the word " at " , or to the word " in " , the words " or near " , or the words " or in the near neighbourhood thereof " or similar words, shall be implied in all statements of place where the actual place is not of the essence of the charge.
- (3) Where the circumstances of the offence charged make it necessary to take an exceptional latitude in regard to time or place it shall not be necessary to set forth such circumstances in the indictment, or to set forth that the particular time or the particular place is to the prosecutor unknown:

Provided that where exceptional latitude is taken, the court shall, if satisfied that such exceptional latitude was not reasonable in the circumstances of the case, give such remedy to the person accused by adjournment of the trial or otherwise as shall seem just.

51 Latitude as to quantities, persons, things or modes

The latitude formerly in use to be taken in indictments in describing quantities by the words " or thereby " , or the words " or part thereof " , or the words " or some other quantity to the prosecutor unknown " or similar words, shall be implied in all statements of quantities; and the latitude formerly in use to be taken in stating details connected with the perpetration of any act regarding persons, things or modes by inserting general alternative statements followed by the words " to the prosecutor unknown " or similar words, shall be implied in every case.

52 Description of buildings, goods, money or other property

Where in an indictment, whether raised under statute or at common law, buildings, goods, money or property of any other description are mentioned, it shall not be necessary to allege the property or possession thereof to be in any person, official, corporation or company, or that the same were not the property of the accused, and the allegation that the same were not the property of the accused shall be implied in all cases where it is essential to the criminality of the charge.

53 Description of persons, goods, etc.

Where in an indictment or any list or inventory relative thereto any person is referred to, it shall be sufficient to describe him by his name and ordinary address, and it shall not be necessary to describe him as " now or lately " residing at such address, but such

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words shall be implied, and where goods, articles or things require to be described, it shall be sufficient to describe them in general terms without specifying the materials of which they are made, or any particulars which distinguish them from other goods, articles or things of a similar kind except in cases in which such particulars are essential to the constitution of the crime charged.

54 " Money" to include coin, bank notes and post office orders

The word " money " when used in an indictment shall include all current coin of the realm, post office orders and postal orders and bank or banker's notes, and it shall not be necessary to specify in any statement in an indictment relating to a sum of money whether such sum consisted of gold, silver or other coin, post office orders or postal orders, or bank or banker's notes, or any of them, but it shall be sufficient to state the sum as consisting of money.

55 Setting forth documents unnecessary

Where in an indictment any document requires to be referred to, it shall not be necessary to set forth the document or any part of it in such indictment, but it shall be sufficient to refer to such document by a general description and, where it is to be produced, by the number given to it in the list of productions for the prosecution.

56 Declarations, etc. not averred

It shall not be necessary to set forth in an indictment the fact that the accused person emitted a declaration, nor to set forth any productions that are to be used against him, but it shall be sufficient that they be entered in the list of productions to be used at the trial.

57 Indictments, etc., written or printed or partly so

The principal record and service copies of indictments and all notices of citation, all lists of witnesses, productions and jurors, and all other official documents required in criminal prosecutions, may be either written or printed, or partly written and partly printed.

58 Authentication of alterations to indictment, etc.

- (1) Any deletion or correction made before service on the principal record or service copy of an indictment shall be sufficiently authenticated by the initials of any person who has signed, or could by law have signed, the same.
- (2) Any deletion or correction made on a service copy of an indictment, or on any notice of citation, postponement, adjournment or other notice required to be served on a person accused or on any execution of citation or notice of other document requiring to be served shall be sufficiently authenticated by the initials of the person serving the same.

59 Reset

Criminal resetting of property shall not be limited to the receiving of property taken by theft or robbery, but shall extend to the receiving of property appropriated by breach of trust and embezzlement and by falsehood fraud and wilful imposition; and under

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any indictment charging the resetting of property dishonestly appropriated by any of these means, it shall not be necessary to set forth any details of the crime by which the dishonest appropriation was accomplished, but it shall be sufficient to set forth that the person accused received such property, it having been dishonestly appropriated by theft or robbery, or by breach of trust and embezzlement, or by falsehood fraud and wilful imposition, as the case may be.

60 Robbery, etc., to include reset, theft to include breach of trust, etc.

- (1) Under an indictment for robbery, or for theft, or for breach of trust and embezzlement, or for falsehood fraud and wilful imposition, a person accused may be convicted of reset.
- (2) Under an indictment for robbery, or for breach of trust and embezzlement, or for falsehood fraud and wilful imposition, a person accused may be convicted of theft.
- (3) Under an indictment for theft, a person accused may be convicted of breach of trust and embezzlement, or of falsehood fraud and wilful imposition, or may be convicted of theft, although the circumstances proved may in law amount to robbery.
- (4) The power conferred by this section to convict a person of an offence other than that with which he is charged in an indictment 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.

61 Procedure where more than one crime charged

- (1) Where in an indictment two or more crimes or acts of crime are charged cumulatively, it shall be lawful to convict of any one or more of them.
- (2) Any part of what is charged in an indictment, constituting in itself an indictable crime, shall be deemed separable to the effect of making it lawful to convict of such crime.
- (3) Where any crime is charged in an indictment as having been committed with a particular intent or with particular circumstances of aggravation, it shall be lawful to convict of the crime without such intent or aggravation.

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

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

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63 Attempt at crime

- (1) Attempt to commit any indictable crime shall itself be an indictable crime, and under an indictment which charges a completed crime, the accused may be lawfully convicted of an attempt to commit such crime; and under an indictment charging an attempt, the accused may be convicted of such attempt although the evidence be sufficient to prove the completion of the crime said to have been attempted.
- (2) Under an indictment which charges a crime which imports personal injury inflicted by the accused, resulting in death or serious injury to the person, the accused may be lawfully convicted of the assault or other injurious act, and may also be lawfully convicted of the aggravation that such assault or other injurious act was committed with intent to commit such crime.

64 Statutory offences which are offences at common law

Where any act set forth in an indictment as contrary to any Act of Parliament is also criminal at common law, or where the facts proved under such an indictment do not amount to a contravention of the statute but do amount to a crime at common law, it shall be lawful to convict of the common law crime.

65 Superfluous particulars as to identity

When in the trial of any indictment the evidence led shall be sufficient to prove the identity of any person, corporation or company, or of any place, or of any thing, it shall not be a valid objection to the sufficiency of such evidence that any particulars set forth in regard thereto in the indictment have not been proved.

66 Proof of exceptions, qualifications, etc.

Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany in the same section the description of the offence in the statute or order creating the offence, may be proved by the accused, but need not be specified or negated in the indictment, and no proof in relation to such exception, exemption, proviso, excuse, or qualification shall be required on behalf of the prosecution.

67 Offence committed in special capacity

Where an offence is alleged to be committed in any special capacity, as by the holder of a licence, master of a vessel, occupier of a house, or the like, the fact that the accused possesses the qualification necessary to the commission of the offence shall, unless challenged by preliminary objection before his plea is recorded, be held as admitted.

Notice of previous convictions

68 Notice of previous convictions

- (1) 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.

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- (2) If the prosecutor desires to place before the court any previous conviction, he shall cause to be served on the accused along with the indictment a notice in the form of Form No. 1 of Schedule 7 to the Criminal Justice (Scotland) Act 1949 or in the form set out in an Act of Adjournal under this Act or as nearly as may be in such form, and any conviction set forth in that notice shall be held to apply to the accused unless he gives, in accordance with subsection (3) of this section, written intimation objecting to such conviction on the ground that it does not apply to him or is otherwise inadmissible.
- (3) Where the accused pleads not guilty at the first diet, intimation objecting to a conviction under subsection (2) of this section 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 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, at least two clear days before that diet, given intimation to the procurator fiscal of the district to the court of which the accused is cited for that diet.
- (4) Where notice is given by the accused under section 102 of this Act of his intention to plead guilty and the prosecutor desires to place before the court any previous conviction, he shall cause to be served on the accused along with the indictment a notice in the form of Form No. 1 of Schedule 7 to the Criminal Justice (Scotland) Act 1949 or in the form set out in an Act of Adjournal under this Act or as nearly as may be in such form, 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.

Citation of Accused, Witnesses and Jurors

69 Warrants for citation

When any sitting of the sheriff court or of the High Court has been appointed to be held for the trial of persons accused on indictment, the sheriff clerk of the district in which the second diet is to be called, where such trials are to take place in the sheriff court, or the Clerk of Justiciary, where such trials are to take place in the High Court, shall issue a warrant to officers of law to cite persons accused, witnesses, and jurors, conform to Schedule B to the Criminal Procedure (Scotland) Act 1887 ; and the execution of the citation against such accused persons shall be conform to Schedule C to that Act; and the execution of the citation of witnesses shall be conform to Schedule D to that Act; and the execution of the citation of jurors shall be conform to Schedule E to that Act; and such warrant authenticated by the signature of such clerk, or a duly certified copy thereof, shall be a sufficient warrant to all officers competent.

The warrant and the executions mentioned in this section may, instead of being conform to the said Schedules B to E, be in the form set out in an Act of Adjournal under this Act or as nearly as may be in such form.

70 Service of indictment and list of witnesses

The accused shall be served with a full copy of the indictment and of the list of the names and addresses of the witnesses to be adduced by the prosecution.

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71 Manner of service of indictment, etc.

Service of indictment, list of witnesses and list of productions appended thereto, and all notices or intimations to the accused, and all citations of witnesses, whether for precognition or trial, may be made or given by any macer, messenger at arms, sheriff officer, or officer of police at any place, and where the accused is in prison at the time of service on him, such service shall be made by any governor, deputy governor, or warder of the prison.

72 Officers may cite jurors and witnesses, without witnesses and oath of officer sufficient evidence of citation

It shall be sufficient for the citation of any juror or witness that such citation be given by any officer of law duly authorised, without witnesses; and the oath of such officer in support of the execution shall be held and received as sufficient evidence of such citation when the same shall be questioned in a court of law.

73 Execution of citation of indictment

- (1) It shall be no objection to the service of an indictment, or to the citation of any juror or witness, that the officer who discharged the duty was not at the time in possession of the warrant of citation ; and it shall not be necessary to produce the execution of citation of any indictment, unless sentence of forfeiture of a bond of caution granted for appearance to stand trial shall be moved for, but without prejudice to such execution being exhibited to disprove objections to service when stated to the court.
- (2) It shall be no objection to the admissibility of the officer or witness who served such indictment to give evidence respecting such service that his name is not included in the list of witnesses served on the accused.

74 Proceedings against bodies corporate

- (1) In any proceedings 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 letter containing a copy of the indictment has been sent by registered post or by the recorded delivery service 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 Post Office 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.

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- (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 Queen's and Lord Treasurer's Remembrancer.
- (6) Nothing contained in section 103 or 105 of this Act 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 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.

Fixing the Diets

75 Two diets

The notice to a person accused when served with an indictment to appear and answer thereto shall contain two diets of appearance in the form of Schedule F to the Criminal Procedure (Scotland) Act 1887 where the second diet is to be in the sheriff court, and in the form of Schedule G to that Act when the second diet is to be in the High Court, and such first diet shall be not less than six clear days after the service of the indictment, and such second diet shall not be less than nine clear days after such first diet.

The said notice may, instead of being in the form of the said Schedule F or G, be in the form set out in an Act of Adjournal under this Act or as nearly as may be in such form.

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76 Notice for first diet

- (1) Where a person is charged on indictment, the notice for the first diet of appearance shall call on that person to appear in the sheriff court before which he appeared on judicial examination unless the Lord Advocate otherwise directs.
- (2) The Lord Advocate may make a direction that the first diet of appearance may be taken at a sheriff court other than the sheriff court where the accused appeared on judicial examination either in respect of a class of cases or in respect of particular cases.

77 Alteration of diet

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 69 of this Act 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.

Lodging of List of Witnesses, Productions, Special Defence, Etc

78 Record copy indictment and list of witnesses

The record copy of the indictment shall on or before the date of service of the indictment be lodged with the sheriff clerk of the district in which the court of the first diet is situated, and a copy of the list of witnesses and a copy of the list of productions shall be lodged with the sheriff clerk of the district in which the court of the second diet is situated.

79 Description of witnesses

- (1) The list of witnesses shall consist of the names of the witnesses, with their addresses added, and it shall not be necessary to insert the words " now or lately residing at, " or any similar words, and it shall not be an objection to the admissibility of any witness that he has ceased to reside at the address given before the date of the trial, provided that he resided at such address at some time, not being more than six months previous to the date of the trial.
- (2) It shall not be necessary to insert in the list of witnesses the names of any witnesses to the declaration of the accused or the names of any witnesses to prove that an extract conviction applies to the accused, but witnesses may be examined in regard to these matters without previous notice.

80 Objection to witnesses

Any objection in respect of misnomer or misdescription of any person named in the indictment, or of any witness in the list of witnesses, must be stated before a jury has been sworn to try the case, and no such objection shall be admitted as ground for postponing any trial or for excluding any witness, unless the accused shall, at least four clear days before the second diet, give notice to the procurator fiscal of the district of the second diet where notice of trial is given for the sheriff court, or to the Crown Agent where notice of trial is given for the High Court, of his inability to discover who such person named in the indictment is, or to find such witness, and shall show

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that notwithstanding such intimation to the prosecutor he has not been furnished with such additional information as might enable him to ascertain who such person is, or to find such witness in sufficient time to recognise him before the trial, and where either of these things shall be shown the court shall give such remedy by postponement, adjournment, or otherwise, as shall seem just.

81 Examination by prosecutor of witnesses, etc., not included in lists lodged

In any trial it shall be competent with the leave of the court for the prosecutor to examine any witness or to put in evidence any production not included in the lists lodged by him, provided that written notice containing, in the case of a witness, his name and address shall have been given to the accused not less than two clear days before the day on which the jury is sworn to try the case.

82 Written notice of special defence and examination of witnesses and productions not included in lists lodged

- (1) It shall not be competent for the accused to state any special defence unless a plea of special defence shall be tendered and recorded at the first diet, or unless cause be shown to the satisfaction of the court for a special defence not having been lodged till a later day, which must in any case not be less than two clear days before the second diet.
- (2) It shall not be competent for the accused to examine any witnesses or to put in evidence any productions not included in the lists lodged by the prosecutor, unless written notice of the names and addresses of such witnesses and of such productions shall have been given to the procurator fiscal of the district of the second diet when the case is to be tried in the sheriff court, or to the Crown Agent where the case is to be tried in the High Court, at least three clear days before the day on which the jury is sworn to try the case, or unless the accused shall show before a jury is sworn to try the case that he was unable to give the full notice of three days in regard to any witnesses he may desire to examine or productions he may desire to lodge, and where this is shown the court shall give such remedy to the prosecutor by adjournment or postponement of the trial or otherwise as shall seem just.
- (3) A copy of every written notice required by the last foregoing subsection shall be lodged by the accused with the sheriff clerk of the district in which the second diet is to be held, or in any case the second diet of which is to be held in the High Court in Edinburgh with the Clerk of Justiciary, at or before the second diet, for the use of the court.

83 Accused entitled to see productions

The accused shall be entitled to see the productions according to the existing law and practice in the office of the sheriff clerk of the district in which the court of the second diet is situated or, where the second diet is to be in the High Court in Edinburgh, in the Justiciary Office.

84 Proof as to productions

Where 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

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unless the accused, at least four days before the second diet, gives to the Crown Agent, where he is cited to the High Court 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.

Preparation of Jury List, etc.

85 Forty-five jurors to be returned for trials

- (1) For the purpose of a trial, the number of jurors required to be returned by the sheriff principal to the court shall be 45, unless otherwise directed.
- (2) The Lord Justice Clerk or any Lord Commissioner of Justiciary may direct more than 45 persons to be summoned as jurors to serve in any trial in the High Court.

86 Jurors for High Court at Edinburgh

The High Court may by Act of Adjournal specify the areas from which and the proportions in which jurors are to be summoned for trials in that court to be held in Edinburgh, and for any such trial the sheriff principal of the sheriffdom in which the trial is to take place shall requisition the required number of jurors from the areas and in the proportions so specified.

87 Jurors for High Court when on circuit

Where the High Court is to be on circuit, the sheriff principal of the sheriffdom in which a trial is to be held shall requisition from the sheriff court districts in which the circuit is to take place the required number of jurors for that trial in such proportions as may be specified in an Act of Adjournal under this Act.

88 Area from which jury summoned to circuit court

When the High Court shall exercise its power of holding a court in any town which may be most convenient for the trial of any crime in or near the locality in which such crime has been committed, and where such town is not one of the towns in which the High Court usually sits, the jury summoned to try such case shall be summoned from the general jury roll of the sheriff court district in which such town is situated.

89 Jurors in inferior courts

For the purpose of a trial in any inferior court the clerk of court shall be furnished with a list of names from the jury book of the sheriff court district in which the court is held, containing the number of persons required.

90 Order in which names of jurors are to be taken

The sheriffs principal, in any return of jurors made by them to a court, shall take the names in regular order, beginning at the top of the lists in the said jury books, in each of the sheriff court districts, as required ; and as often as any juror shall be returned to them, they shall mark or cause to be marked, in the said general jury book of their respective sheriff court districts the date when any such juror shall have been returned

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to serve; and in any such return they shall commence with the name immediately after the last in the preceding return, without regard to the court to which the return was last made, and taking the subsequent names in the order in which they shall have been entered, as herein directed, and so to the end of the lists respectively.

91 Names of jurors dying or becoming disqualified to be passed over in making returns of jurors

Where a person whose name has been entered in the said general jury book dies, or becomes disqualified as a juror, whether from loss of property, absence, or other legal cause, the sheriff principal, in making returns of jurors in accordance with the provisions of this Act, shall pass over the name of that person, but the date at which his name shall have been so passed over, and the reason therefor, shall be entered at the time in the said general jury book.

92 Jurors as returned to serve on trials

The lists returned in accordance with the provisions of this Act by the sheriffs principal to the clerks of court, and none other, shall be used for the several trials for which the same shall have been required.

93 Names of jurors to be inserted in one roll

The persons to serve upon assizes in the High Court shall be listed and their names and designations shall be inserted in one roll to be signed by the judge.

94 One list of assize sufficient for all trials at the same diet in High Court

When in the High Court more than one case shall be set down for trial at one and the same diet, it shall not be necessary to prepare more than one list of assize, and such list shall be authenticated by the signature of a judge of the said court, and shall be the list of assize for the trial of all parties cited to that particular diet; and the persons included in such list shall be summoned to serve generally upon the assize of all the accused cited to such diet, and one general execution of citation only shall be returned against them; and a copy of such list, certified by one of the clerks of court, shall have the like effect, for all purposes for which such list may be required, as the principal list of assize authenticated as aforesaid.

95 No irregularity in lists, etc., to be an objection to jurors

No irregularity in making up the lists in accordance with the provisions of this Act, or in transmitting the same, or in the warrant of citation, or in summoning jurors, or in returning any execution of citation, shall constitute an objection to jurors whose names shall be included in the jury list, reserving always to the court to judge of the effect of an objection founded on any felonious act by which jurors may be returned to serve in any case contrary to the provisions of this Act or the Jurors (Scotland) Act 1825.

96 Notice of jury list

- (1) It shall not be necessary to serve any list of jurors upon the accused, but on and after the date of the service of an indictment a list of jurors, prepared under the directions of the Clerk of Justiciary where the second diet is to be held in the High Court, and

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prepared by the sheriff clerk of the district in which the second diet for the trial of such person is to be held, where the second diet is to be held in the sheriff court shall be kept in the office of the sheriff clerk of the district in which the court of the second diet is situated, and the accused shall be entitled to have a copy supplied to him on application free of charge.

- (2) Such list shall contain not less than 30 names, and shall be headed " List of Assize for the Sitting of the High Court of Justiciary (or, the Sheriff Court of _____ at _____) on the _____ of _____ 19__ ."

97 Sufficient jurors only to be summoned

It shall not be necessary to summon all the jurors contained in any list of jurors under this Part of this Act, but it shall be competent to summon such jurors only, commencing from the top of the list as may be necessary to ensure a sufficient number for the trial of the cases which shall remain for trial at the date of the citation of the jurors, and such number shall be fixed by the clerk of the court in which the second diet is to be called, or in any case in the High Court by the Clerk of Justiciary, and where jurors are not summoned, from the whole jurors in any list not being required, such jurors shall be placed upon the next list issued, until they have attended to serve.

98 Jurors to be cited by registered letter or recorded delivery

The sheriff clerk of the sheriffdom in which a sitting of the High Court is to be held, or his depute, or the sheriff clerk of the sheriff court district in which any juror is to be cited, or his depute, where the citation is for a trial before a sheriff, shall fill up and sign a proper citation addressed to each such juror, and shall cause the same to be transmitted to him by letter, sent to him at his place of residence as stated in the roll of jurors by registered post or recorded delivery; and a certificate under the hand of such sheriff clerk, or his depute, of the citation of any jurors or juror in manner herein provided, shall be deemed a legal citation:

Provided that the sheriff clerk of the sheriffdom in which a sitting of the High Court is to be held shall issue citations to the whole jurors required for said sitting, whether said jurors reside in that or in any other sheriffdom.

99 Fining of jurors for non-attendance

- (1) Persons cited to attend as jurors may be fined if they fail to attend.
- (2) A fine imposed under this section at a sitting of the High Court may, on application, be remitted in accordance with the provisions of Schedule 2 to this Act.

100 No exemptions by sex or marriage from liability to serve as juror

- (1) A person shall not be exempted by sex or marriage from the liability to serve as a juror but any judge may, in his discretion, on an application made by or on behalf of the prosecution or the accused or at his own instance, make an order that the jury shall be composed of men only or of women only, as the case may require, or may, on an application made by a woman to be exempted from service on a jury in respect of any case by reason of the nature of the evidence to be given or of the issues to be tried, grant such exemption.

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- (2) Rules of court may be made by Act of Adjournal—
- (a) prescribing the manner in which jurors are to be summoned and to be selected from the panel;
 - (b) exempting from attendance as jurors any women who are for medical reasons unfit to attend;
 - (c) as to the procedure to be adopted on any application under this section relating to service on juries;
 - (d) requiring or authorising an application under this section, or any order thereon, to be made in interlocutory proceedings. The rules of court in relation to the matters referred to in this subsection which are in force at the commencement of this Act are set out in Schedule 3 to this Act.
- (3) Any enactment relating to juries which is in force at the commencement of this Act shall have effect subject to the provisions of this section.

Delay in trial

101 Prevention of delay in trials

- (1) Any prisoner who is in prison on a commitment until liberated in due course of law, and who shall not be served with an indictment within 60 days of such commitment, shall be entitled to give notice to the Lord Advocate through the Crown Agent that, if he is not served with an indictment within 14 days of such notice, the prosecutor will be called on to show cause before the High Court why such accused person should not be released from prison and, upon a note being presented to that court setting forth that such notice has been given and that no indictment has been served within that period of 14 days, the court shall ordain the prosecutor forthwith to show cause as aforesaid and, where cause is not shown to the satisfaction of the court, the court shall grant warrant ordering such person to be released at the expiry of three days from the issuing of such order, unless within said three days an indictment be served upon him.
- (2) Where any accused person is liberated as aforesaid, it shall be competent for the prosecutor to raise an indictment against him, and to obtain from a judge of the jurisdiction to which he is cited for the second diet, or a judge of the High Court, a warrant authorising his apprehension and recommitment to prison to await his trial on such indictment, and in the event of the trial on such indictment not taking place at the second diet thereof, or any other day to which it may be adjourned or postponed by the court, the High Court shall, upon the application of the accused, made by a note addressed to the court, and after hearing parties, consider the whole circumstances of the case, and may in its discretion order the immediate release of the accused, or may grant warrant ordering him to be released on a day named in the warrant, unless he shall on or before such day be remitted to the knowledge of an assize on indictment, or may decline to pronounce any order.
- (3) Where the accused has been incarcerated for 80 days, and an indictment is served upon him, and he is detained in custody after expiry of that period of 80 days, then, unless he is brought to trial and the trial concluded within 110 days of the date of his being committed till liberated in due course of law, he shall be forthwith set at liberty and declared for ever free from all question or process for the crime with which he was charged.

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- (4) Where the accused has been liberated from prison after having been committed till liberated in due course of law, he shall not be detained in prison more than 110 days in all; but unless his trial is brought to a conclusion before the expiry of the 110th day of confinement in prison subsequent to commitment till liberated in due course of law, he shall be forthwith set at liberty and declared for ever free from all question or process for the crime for which he was committed.
- (5) Notwithstanding the generality of the foregoing provisions of this section, in any case brought before it under this section, the High Court may order the accused to be kept in custody, with a view to trial, for such further period or periods as to the court may seem just if the court is satisfied that the trial ought to be allowed to proceed after the expiry of the said period of 110 days where the delay in prosecuting to a verdict is due to—
 - (a) the illness of the accused or of a judge or juror,
 - (b) the absence or illness of any necessary witness, or
 - (c) any other sufficient cause for which the prosecutor is not responsible.

Accelerated Trial

102 Procedure where accused desires to plead guilty

- (1) Where the accused shall give written notice to the Crown Agent through his own procurator that he desires to have his case at once disposed of, and declares his intention to plead guilty, it shall be lawful to serve the accused with an indictment and a notice to appear at a diet not less than four clear days after such notice before the sheriff before whom under this Part of this Act he would be cited to a first diet, and it shall not be necessary to lodge or give notice of any list of witnesses or productions.

The notice to appear referred to in this subsection shall be in the form set out in Schedule L 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.

- (2) At said diet the sheriff, if any plea of guilty has been accepted by the procurator fiscal, shall deal with the case in like manner as a case where the accused pleads guilty at a first diet:

Provided that if the case is such as can be tried only in the High Court, or is of such an aggravated nature that the sheriff shall hold that the question of punishment should be disposed of by that court, the sheriff shall, by interlocutor written on the record copy of the indictment in the form set out in Schedule M to the said Act of 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form, remit the accused to that court for sentence, and such remit shall be a sufficient warrant to bring the accused, without any further notice, before the High Court for sentence at any Sitting at any place that may be convenient, as the Lord Advocate may order, and the original warrant of commitment of such person till liberated in due course of law shall remain in force until he is brought before the High Court for sentence.

- (3) If the accused when brought before the sheriff on such indictment shall plead not guilty to the charge or plead guilty only to a part of the charge, and the procurator fiscal shall decline to accept such restricted plea, then the diet shall be deserted *pro loco et tempore*, and thereafter the procedure against the accused may be according to the other provisions of this Part of this Act.

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First Diet

103 Sheriff court case

- (1) At the first diet the procurator fiscal of the district in which such diet is called shall represent Her Majesty's Advocate, unless an advocate depute or the procurator fiscal of the district of the second diet shall do so. Where the case is one the second diet of which is to be in the sheriff court, the sheriff shall proceed according to the existing law and practice as varied by this Part of this Act, and where the sheriff presiding is not the sheriff of the court of the second diet, he shall have all the powers exercised under the existing law and practice by a sheriff at a first diet.
- (2) Where the accused pleads guilty in whole or in part, the sheriff shall have power to adjourn the case to another sitting of his court with a view to considering what sentence should be pronounced, whether the case be one the second diet of which is to be called in his own or another court; and where the second diet is fixed for a different court any interlocutor disposing of any preliminary plea, any plea tendered, any interlocutor adjourning the case, or any sentence pronounced shall be written on the record copy of the indictment.
- (3) Where the accused pleads guilty to the indictment or any part thereof, he shall be required to sign the same if he be able to write; and in every case the sheriff shall append his signature to the plea recorded.
- (4) Where—
 - (a) the accused pleads guilty only to a part of the charge, or to a minor offence included in the charge, and the prosecutor does not accept such plea, or
 - (b) where on a plea of guilty to the whole charge the sheriff shall consider it expedient in the circumstances, whether on the representation of the accused or otherwise, that the sentence to be pronounced should be determined by the sheriff of the district in which the second diet is to be called,
 the sheriff shall sign an interlocutor on said record copy in the form set out in Schedule H 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 sheriff clerk shall record any interlocutor signed, plea tendered or sentence pronounced, in the books of court, or in a record to be kept for the purpose, and shall forthwith transmit the record copy of the indictment to the sheriff clerk of the district of the court of the second diet.
- (5) Nothing contained in this section shall require a plea tendered by or on behalf of a company to be signed.

104 Remit to High Court for sentence

In any proceedings on indictment in which the second diet is to be in the sheriff court—

- (a) where the accused shall either at the first or at the second diet plead guilty in whole or in part, and the prosecutor shall accept such plea, or
- (b) where the accused shall at the second diet be found guilty in whole or in part by verdict of the jury.

the sheriff, if he shall hold that any sentence which he can competently pronounce is inadequate and that the question of punishment should be disposed of by the High Court.—

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- (i) shall endorse upon the record copy of the indictment a certificate of the plea tendered or of the verdict returned, and
- (ii) shall by interlocutor written on the said record copy remit the accused to the said court for sentence, and
- (iii) may, if he shall think fit, append to such interlocutor a note setting forth the reasons for such remit, and such remit shall be of the like force and effect in all respects as a remit in terms of section 102 of this Act.

105 High Court case

- (1) At the first diet, where the case is one in which the second diet is to be in the High Court, the sheriff shall hear any objection of a preliminary nature, whether to the citation or relevancy or otherwise.
- (2) If—
 - (a) the sheriff shall be of opinion, upon any objection made to—
 - (i) any discrepancy between the record copy of the indictment and the service copy, or
 - (ii) any error or deficiency in such service copy, or in the notice of citation,that such discrepancy, error or deficiency could not mislead or prejudice the accused, or
 - (b) he shall be of opinion that any other preliminary objection made is frivolous, or
 - (c) no preliminary objection be made,the sheriff shall call upon the accused to plead guilty or not guilty, and shall endorse upon the record copy of the indictment a certificate of the plea tendered in the form set out in Schedule 1 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.
- (3) Where the accused pleads guilty to the indictment or any part thereof, he shall be required to sign the same if he is able to write ; and in every case the sheriff shall append his signature to the plea recorded.
- (4) Where the sheriff shall hold such a discrepancy, error or deficiency as aforesaid to be one which tends substantially to mislead and prejudice the accused, or where any other preliminary objection shall be held by him not to be frivolous, he shall endorse upon the record copy of the indictment a certificate in the form set out in Schedule K to the said Act of 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form, and the sheriff clerk shall record any certificate so written on such record copy in the books of court or in a record to be kept for the purpose, and shall forthwith transmit the record copy of the indictment to the Clerk of Justiciary.
- (5) Nothing contained in this section shall require a plea tendered by or on behalf of a company to be signed.

106 Power to convict on plea of guilty to offence other than that charged in indictment

If a person charged on indictment with any crime or offence tenders a plea of guilty of any other crime or offence of which he could competently, by virtue of any enactment, be found guilty on the trial of such indictment, and if the plea is accepted by the

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prosecutor it shall be competent to convict such person of the crime or offence to which he has so pled guilty and to sentence him accordingly.

107 Solicitor of place of second diet may defend at both diets

In all cases a solicitor who is entitled to conduct proceedings in the courts of the district of the second diet shall be entitled to appear at the first diet and to conduct the defence, although he may not be entitled to conduct other law business in the locality of the first diet.

108 Certain objections competent only at first diet

No objection by the accused to the validity of the citation against him, on the ground of any discrepancy between the record copy of the indictment and the copy served on him, or on account of any error or deficiency in such service copy or in the notice of citation, shall be competent unless the same be stated to the sheriff at the first diet before the accused is called upon to plead, and no such discrepancy, error or deficiency shall entitle the accused to object to plead to such indictment unless the sheriff shall be satisfied that the same tended substantially to mislead and prejudice the accused.

109 Interlocutor of relevancy unnecessary

It shall not be necessary to enter upon the record an interlocutor finding the indictment relevant and, when objections are taken to the relevancy, it shall not be necessary to enter on the record copy of the indictment or in the record any other minute setting forth how such objections were disposed of, except that such objections were sustained or repelled, and such minute shall be signed by the clerk of court.

110 Where sentence delayed, original warrant of commitment stands

In all cases where the accused pleads guilty at the first diet and is not forthwith sentenced by the sheriff, he shall be detained in custody until he is sentenced, under the existing warrant of commitment, unless the Lord Advocate shall consent to his being suffered to go at large, and, where such consent is given, it shall be on such conditions as to bail as the Lord Advocate shall fix, but no unreasonable delay shall be allowed to take place between the time of the accused pleading guilty and his being brought up for sentence.

111 Postponement on old warrant where diet deserted

Where a diet is deserted *pro loco et tempore*, or where a diet is postponed or adjourned, or an order issued for the trial to take place at a different place from that first given notice of, it shall not be necessary that a new warrant should be granted for the incarceration of the accused, but the warrant of commitment on which he is at the time in custody till liberated in due course of law shall continue in force.

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Sittings of High Court

112 Sittings of Court of Justiciary

- (1) All crimes may be tried before any circuit Court of Justiciary by indictment in the same manner as before the High Court at Edinburgh.
- (2) All sittings of the Court of Justiciary shall be sittings of the High Court.

113 Judges in High Court

- (1) Every person who shall be appointed to the office of one of the senators of the College of Justice in Scotland shall, by virtue of such appointment, be a Lord Commissioner of Justiciary in Scotland.
- (2) If any difference shall arise as to the rotation of judges in the High Court, the same shall be determined by the Lord Justice General.
- (3) Any judge or judges in the High Court may discharge the duty of any circuit court, notwithstanding that such judge or judges may not have been specially named for that duty.
- (4) The Lord Justice General, Lord Justice Clerk, or any Lord Commissioner of Justiciary may preside alone at the trial of any panel before the High Court, and when so presiding shall constitute a quorum of the High Court:

Provided that in any trial of difficulty or importance it shall be competent for two or more judges in the High Court to preside.

114 Power to High Court to determine circuits, etc.

- (1) It shall be lawful for the High Court by Act of Adjournal from time to time as to them shall seem necessary after consultation with the Lord Advocate—
 - (a) to alter the existing circuits of the High Court, to form new circuits, and to fix and determine the limits of each existing or new circuit, and the regions and districts or parts thereof which shall be included within the same;
 - (b) to detach any portion of the district exclusively attached to the said High Court sitting at Edinburgh from such district and to include the same in any adjoining circuit or to detach any district from an adjoining district and to include the same in the district exclusively attached to the said High Court sitting at Edinburgh;
 - (c) to fix and determine the number of circuit courts to be held and the places at which the same shall be held within each such circuit in each year, and to define the periods of the year at which such circuit courts shall be held and to alter the same as occasion shall require, and to appoint the particular dates of such courts; and
 - (d) to make such provision as may be necessary for the carrying out of the powers hereinbefore conferred, including such modifications as may appear to be necessary in the existing statutory provisions for preparing and keeping jury books and for making returns of and summoning jurors to serve on any assize for the trial of criminal cases.
- (2) The High Court shall hold such sittings for the trial of criminal cases from time to time as may be necessary on the requisition of the Lord Advocate.

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115 Sitting dispensed with

It shall not be necessary for the High Court to proceed to any town for the purpose of holding any court in use to be held in such town, where there are no cases indicted for the sitting of the court at such town, or when so many of the persons indicted thereto have pleaded guilty before the sheriff at the first diet as to make the holding of a special court inexpedient, and in that event such cases as remain for trial may be ordered to be brought up at another sitting of the High Court in manner provided in section 117 of this Act.

116 Adjournment of second diet

When the accused who is cited to the High Court for the second diet has pleaded guilty at the first diet, it shall be lawful for any Lord Commissioner of Justiciary in chambers, and without the presence of the prosecutor or person accused, to adjourn the second diet to any other sitting of the High Court.

117 Sitting transferred where few cases

- (1) Where so many of the persons who have been indicted for any sitting of the High Court have pleaded guilty at the first diet as to make the holding of a separate court for the cases remaining unnecessary, it shall be lawful for any Lord Commissioner of Justiciary, on the petition of the Lord Advocate, and in chambers and without the presence of the prosecutor or the accused, to order the second diets of such cases to be postponed and to be held at any other sitting of the High Court which is about to be held.
- (2) Upon such order for postponement being issued, a notice shall forthwith be served upon the accused, who may have already been cited, in the form set out in Schedule 0 to the Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournment under this Act or as nearly as may be in such form.

118 Trial on adjacent circuit

Where any crime is committed in a circuit district in which no sitting of the High Court falls to be held in ordinary course for some months thereafter, it shall be competent to cite the accused to appear before any earlier sitting of the High Court in an adjacent circuit district.

119 Place of certain trials

Where, because of the distance of any burgh or town from the town in which the High Court usually sits, or for any other cause, it shall be deemed expedient that trials of persons accused of crimes committed in such burgh or town, or in places adjacent thereto, should be tried there instead of being tried at the town in which the court usually sits, it shall be lawful for the High Court at Edinburgh, on the application of the Lord Advocate, to give all such directions in that behalf as the said court shall think fit; and the sheriff of the sheriff court district within which such burgh or town is situated shall give obedience to all directions so given.

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120 Notification after first diet of intention to plead guilty

- (1) Where an accused, who has pleaded not guilty at the first diet, shall thereafter, at any time before the date appointed for the second diet in the High Court, give written notice to the Crown Agent through his own procurator that he intends to plead guilty to the charge in whole or in part, and the Lord Advocate shall intimate to the Clerk of Justiciary that he is prepared to accept such plea, section 116 of this Act shall apply to the case of the accused in like manner as if he had pleaded guilty at the first diet, and where the accused shall at the second diet tender a plea not in accordance with the notice, and such plea shall not be accepted by the prosecutor, section 122 of this Act shall apply in like manner as it applies to the case where the High Court allows a plea of guilty to be withdrawn or modified.
- (2) Sections 115 and 117 of this Act shall apply wherever the number of persons indicted for any sitting of the High Court, who have neither pleaded guilty nor in whose cases such notice and intimation as are mentioned in the foregoing subsection have been given, is such as to render the holding of a special or separate court inexpedient or unnecessary.

Procedure at Trial

121 Second diet-Transcript of procedure at first diet

- (1) At the calling of the second diet in the sheriff court in the same sheriff court district as the court of the first diet, the procedure shall be in accordance with the existing law and practice as varied by the provisions of this Part of this Act.
- (2) When the second diet is in the sheriff court of a different sheriff court district, or in the High Court, the clerk of court shall on the diet being called enter in the books of court, or in a record to be kept for the purpose, a transcript of the procedure at the first diet as endorsed on the record copy of the indictment by the sheriff who presided at that diet, and thereafter, if in the sheriff court, the case shall, after the plea of the accused has been tendered and recorded, proceed in accordance with the existing law and practice as varied by the provisions of this Part of this Act.

122 Review at second diet in High Court

- (1) Where a person accused is cited to the High Court for the second diet, that court shall have power to review the proceedings at the first diet and the following provisions of this section shall apply.
- (2) Where the accused has pleaded guilty to the whole or any part of the charge at the first diet, the High Court may at such second diet, if it shall be shown that such plea was taken—
 - (a) to an incompetent or irrelevant charge, or
 - (b) under substantial error or misconception, or
 - (c) under circumstances which tended to prejudice the accused,allow such plea to be withdrawn or modified.
- (3) Where such plea is so withdrawn or modified, the court shall on the motion of the prosecutor desert the diet *pro loco et tempore*, or postpone the trial to a later date, which shall be notified to the accused in open court.

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- (4) Where such postponement makes it necessary that the jury for the trial of the case shall be taken from a different list from that of which notice was given to the accused, such list shall be prepared, signed, and kept in the office of the appropriate sheriff clerk within three clear days of such postponement in the manner provided in section 96 of this Act.

123 Amendment of indictment

- (1) No trial shall fail or the ends of justice be allowed to be defeated by reason of any discrepancy or variance between the indictment and the evidence.
- (2) It shall be competent at any time prior to the determination of the case, unless the court see just cause to the contrary, to amend the indictment by deletion, alteration or addition, so as to cure any error or defect therein, or to meet any objection thereto, or to cure any discrepancy or variance between the indictment and the evidence.
- (3) Nothing in this section shall authorise an amendment which changes the character of the offence charged, and, if the court shall be of opinion that the accused may in any way be prejudiced in his defence on the merits of the case by any amendment made under this section, the court shall grant such remedy to the accused by adjournment or otherwise as to the court may seem just.
- (4) An amendment made under this section shall be sufficiently authenticated by the initials of the clerk of court.

124 On plea of guilty, jury to be dispensed with and sentence pronounced

When a person indicted shall plead guilty to the crime or crimes of which he is accused, it shall not be necessary to name a jury for the trial of the case, but the court before which the accused shall be tried shall have power forthwith to pronounce sentence in like manner as if a verdict of guilty had been returned.

Provided that such plea of guilty shall be made in open court, and shall then and there be subscribed by the panel, and shall be authenticated by the signature of the judge.

125 On plea of not guilty, jury to be balloted and sworn

In the High Court, when the accused pleads not guilty, the clerk of the court shall make an entry in the record, that in respect that the panel pleaded not guilty, the panel was remitted to an assize, and that the following jurymen were balloted for and duly sworn to try the libel, and he shall proceed at once to ballot for and swear the jury.

126 On plea of not guilty, the indictment need not be read over

When the accused, on being brought to the bar, shall say that he means to plead not guilty, and does not desire that the indictment should be read over, it shall not be necessary to read it over before proceeding with the trial.

127 Procedure where trial does not take place

- (1) Where at the second diet—

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- (a) the diet has been deserted *pro loco et tempore* for any of the causes set forth in section 122 of this Act, or
- (b) an indictment is for any cause not brought to trial and no order has been given by the court postponing such trial or appointing it to be held at a subsequent date at some other sitting of the court,

it shall be lawful at any time within nine clear days after the date of such second diet to give notice to the accused on another copy of the indictment to appear to answer such indictment at a further diet either in the High Court or in the sheriff court when the charge is one that can be lawfully tried in that court, notwithstanding that the original citation to a second diet was to a different court.

- (2) The notice referred to in subsection (1) of this section shall be in the form set out in Schedule N 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.
- (3) The further diet specified in the notice referred to in subsection (1) of this section shall be not earlier than nine clear days from the giving of such notice.
- (4) On or before the day on which such notice is given, a list of jurors shall be prepared, signed and kept by the sheriff clerk of the district to which such notice applies in the manner provided in section 96 of this Act.

128 Provision for death or illness of judge

- (1) Where 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—
 - (a) in the case where the diet has not been called, to convene the court and adjourn the 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 subsection (1)(c) of this section the Lord Advocate may 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.

129 Jury to be chosen by ballot in open court

The jurors for the trial of any case shall be chosen in open court by ballot from the list of persons summoned which has been served upon the accused; and for that purpose the clerk of the court shall cause the name and designation of each juror to be written on a separate piece of paper or parchment, all the pieces being of the same size, and shall cause the pieces to be rolled up, as nearly as may be, in the same shape, and to be put into a box or glass and mixed, and the clerk shall draw out the said pieces of paper or parchment one by one from the box or glass; and if any of the persons whose names shall be so drawn shall not appear, or shall be challenged, with or without cause

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assigned, and set aside, then such further number shall be drawn until the number required for the trial shall be made out; and the persons so drawn and appearing, and being sworn, shall be the jury to try the accused, and their names shall be recorded in the minute book kept by the clerk.

130 Challenges and objections to jurors

- (1) Each accused on trial may challenge five of the jurors, and the prosecutor may challenge five of the jurors in all, for any one trial, without being obliged to assign any reason therefor.
- (2) A challenge of a juror shall be made when the name of that juror is balloted and shall not afterwards be allowed.
- (3) Such challenge shall of itself disqualify the person challenged from serving as a juror at the trial.
- (4) Nothing in this section shall affect the right of the accused or the prosecutor to object to any juror on cause shown.
- (5) If any objection is taken to a juror on cause shown and such objection is founded on the want of sufficient qualification as provided by section 1 of the Jurors (Scotland) Act 1825, such objection shall be proved only by the oath of the juror objected to.
- (6) No objection to a juror shall be competent after he has been sworn to serve.

131 Juror without citation not to be objected to

It shall not be competent for the accused or the prosecutor to object to a juror on the ground that such juror has appeared without citation or without having been duly cited to attend.

132 Jurors chosen for one trial may continue to serve

- (1) The jurors chosen for any particular trial may, when that trial is disposed of, without any new ballot, serve on the trials of other persons accused, provided that—
 - (a) such persons and the prosecutor consent thereto,
 - (b) the names of such jurors are contained in the list of assize, and
 - (c) such jurors are duly sworn to serve on each successive trial.
- (2) Where the trials referred to in subsection (1) of this section are in the High Court, the clerk of court shall at the commencement of the first of such trials engross the names and designations of the jurors in the record thereof, and in the record of the subsequent trial or trials it shall be sufficient to mention that the jurors who passed upon the preceding trial or trials also passed upon the assize of the panel or panels then under trial, no objection having been made to the contrary, the said jurors being always sworn together in presence of each panel or set of panels respectively.

133 Jurors may be excused

The court shall have power to excuse any juror from serving on any trial, the grounds of such excuse being stated in open court.

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134 Provision for death or illness of jurors

Where in the course of any trial any juror dies, or the court is satisfied that any juror is, through illness or for any other reason, unfit to continue to serve as a juror, the court may in its discretion, on application made by or on behalf of the Lord Advocate or an accused, direct that the trial shall proceed before the remaining jurors (if they shall be not less than twelve in number), and where any such direction is given the remaining jurors shall be deemed in all respects to be a properly constituted jury for the purpose of the trial and shall have power to return a verdict accordingly whether unanimous or by majority :

Provided that the remaining jurors shall not be entitled to return a verdict of guilty by majority unless at least eight of their number are in favour of such verdict and if, in any such case, the remaining jurors shall inform the court that fewer than eight of their number are in favour of a verdict of guilty, and that there is not a majority in favour of any other verdict, they shall be deemed to have returned a verdict of not guilty.

135 Clerk to state charge, and swear jury

When a jury has been balloted, the clerk of court shall inform the jury of the charge against the accused either by reading the same in the words of the indictment (with the substitution of the third person for the second) or, if the presiding judge shall, because of the length or complexity of the indictment, so direct, by reading to the jury a summary of the charge approved by the judge; and the clerk of court shall thereafter administer the oath in common form ; and it shall not be necessary to lay before the jury copies of the indictment, list of witnesses or list of productions, but it shall nevertheless be competent to the presiding judge, if he shall think fit, to direct that copies of the indictment (without any list of witnesses or of productions appended) shall be laid before the jury.

136 Trial to be continuous

Every trial shall proceed from day to day till concluded unless the court shall see cause to adjourn over a day or days.

137 Seclusion of jury

It shall not be necessary, when for any cause a trial which is proceeding is adjourned from one day to another, that the jury shall be secluded during the adjournment, except in cases where the court shall see fit, whether ex proprio motu or on the motion of the prosecutor or the accused, to order that the jury be kept secluded.

138 Witnesses not to be excluded by reason of conviction, interest, etc.

- (1) No person adduced as a witness shall be excluded from giving evidence by reason of having been convicted of or having suffered punishment for crime, or by reason of interest, or by reason of agency or of partial counsel, or by reason of having appeared without citation or without having been duly cited to attend, or by reason of having been precognosced subsequently to the date of citation.
- (2) Every person so adduced, who is not otherwise by law disqualified from giving evidence, shall be admissible as a witness, notwithstanding any objection offered on any of the above-mentioned grounds.

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- (3) Nothing in this section shall prevent such witness from being examined on any point tending to affect his credibility.
- (4) Where any person who is or has been an agent of the accused shall be adduced and examined as a witness for the accused, it shall not be competent to the accused to object, on the ground of confidentiality, to any question proposed to be put to such witness on matter pertinent to the issue of the guilt of the accused.

139 Witnesses admissible notwithstanding relationship to parties

It shall be no objection to the admissibility of any witness that he or she is the father, mother, son, daughter, brother or sister, by consanguinity or affinity, or uncle, aunt, nephew or niece, by consanguinity of any party adducing such witness in any trial; nor shall it be competent to any witness to decline to be examined and give evidence on the ground of any such relationship.

140 Presence in court not to disqualify witnesses in certain cases 141. Accused and spouse competent witnesses for defence

In any trial the court need not reject any witness against whom it is objected that he has, without the permission of the court, and without the consent of the party objecting, been present in court during the proceedings; but the court may, in its discretion, admit the witness, where it appears to the court that the presence of the witness was not the result of culpable negligence or criminal intent, and that the witness has not been unduly instructed or influenced by what took place during his presence, or that injustice will not be done by his examination.

141 The accused and the spouse of the accused shall be competent witnesses for the defence at every stage of the case, whether the accused is on trial alone or along with a co-accused:

Provided that—

- (a) the accused shall not be called as a witness in pursuance of this section except upon his own application;
- (b) the failure of the accused or the spouse of the accused to give evidence shall not be commented upon by the prosecution;
- (c) the spouse of the accused shall not, save as mentioned in section 143 of this Act, be called as a witness in pursuance of this section except upon the application of the accused;
- (d) nothing in this section or in section 143 of this Act shall compel a spouse to disclose any communication made to him or her by the other spouse during the marriage ;
- (e) the accused who gives evidence on his own behalf in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged;
- (f) the accused who gives evidence on his own behalf in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless—

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- (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged ; or
 - (ii) the accused or his counsel or solicitor has asked questions of the witnesses for the prosecution with a view to establish the accused's good character, or the accused has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of the witnesses for the prosecution; or
 - (iii) the accused has given evidence against any other person charged with the same offence;
- (g) every person called as a witness in pursuance of this section or section 143 of this Act shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

142 Evidence of accused

Where the only witness to the facts of the case called by the defence is the accused, he shall be called as a witness immediately after the close of the evidence for the prosecution.

143 Spouse as witness in certain cases

- (1) The spouse of a person charged with—
- (a) bigamy,
 - (b) any offence mentioned in Schedule 1 to this Act or
 - (c) any offence under any enactment mentioned in Schedule 4 to this Act,
- may be called as a witness either for the prosecution or for the defence without the consent of the person charged.
- (2) Nothing in this section or in section 141 or 346 of this Act shall affect a case where the spouse of a person charged with an offence may at common law be called as a witness without the consent of that person.

144 Notice of spouse as witness

In a case where a list of witnesses is required, the husband or wife of the accused shall not be called as a witness for the defence unless notice has been given in the terms prescribed by section 82 of this Act.

145 Trial in open court

- (1) Without prejudice to section 174 of this Act, no part of a trial shall take place outwith the presence of the accused.
- (2) Where a debate has taken place on the relevance of an indictment, the judge shall give his decision as to relevance in open court in the presence of the accused.
- (3) From the commencement of the leading of evidence in a trial for rape or the like the judge may, if he thinks fit, cause all persons other than the accused and counsel and solicitors to be removed from the court-room.

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- (4) Any person who interrupts or disturbs the court shall be liable to imprisonment or a fine or both as the judge thinks fit.

146 Sheriff's notes of evidence

The sheriff who has presided at a trial shall duly authenticate and preserve the notes of the evidence taken by him in the trial and, if called upon to do so by the High Court, shall exhibit them, or a certified copy thereof, to the High Court.

147 Witness may be examined, etc., as to having previously made a different statement

In any trial, any witness may be examined as to whether he has on any specified occasion made a statement on any matter pertinent to the issue at the trial different from the evidence given by him in such trial; and in such trial evidence may be led to prove that such witness has made such different statement on the occasion specified.

148 Examination of witness

In any trial, it shall be competent for the party against whom a witness is produced and sworn in causa to examine such witness, not in cross only, but also in causa.

149 Witness may be recalled

In any trial, on the motion of either party, the presiding judge may permit a witness who has been examined to be recalled.

150 Admissions and agreements as to evidence

- (1) In any trial, where the accused is legally represented, it shall not be necessary for the accused or for the prosecutor to prove any fact which is admitted by the other, or to prove any document, the terms and application of which are not in dispute between them; and a copy of any document may, where they so agree, be accepted as equivalent to the original document.
- (2) For the purposes of the foregoing subsection any admission or agreement shall be made by lodging with the clerk of court a minute in that behalf signed—
 - (a) in the case of an admission, by the person making the admission if he is the prosecutor, or by his counsel or solicitor if that person is the accused, and
 - (b) in the case of an agreement, by the prosecutor and the counsel or solicitor of the accused.
- (3) Where a minute has been signed and lodged as aforesaid, any facts and documents admitted or agreed thereby shall be deemed to have been duly proved; and a copy of any document so agreed to be accepted as equivalent to the original document shall be accepted as so equivalent.

151 Declarations to be received in evidence without being sworn to by witnesses

- (1) The declaration of the accused, the formal parts of which may be written or printed, or partly written and partly printed, duly authenticated by a justice as having been

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emitted before him according to the existing law and practice, shall be received in evidence without being sworn to by witnesses, and it shall not be necessary to insert the names of any witnesses to the declaration in any list of witnesses, either for the prosecution or for the defence.

- (2) It shall be competent for the defence, before such declaration is read to the jury, to adduce as witnesses the persons who were present when the declaration was emitted, and to examine them upon any matters regarding such declaration on which it would be competent to examine them according to the existing law and practice, and to move the court to refuse to allow the declaration to be read on grounds appearing on the face of the declaration itself, or on the ground of what is disclosed in such evidence or on both of these grounds, and where the defence objects to the declaration, the prosecutor shall be entitled to examine any witnesses in regard thereto, whom the defence may be entitled to examine as aforesaid.

152 Defence to speak last

In any trial the accused or, where he is legally represented, his counsel or solicitor shall have the right to speak last.

153 Seclusion of jury, etc., after retiral

- (1) As soon as the whole case for the prosecution and defence has been heard by the court, if any of the jurors has any doubt which he would like resolved, he shall raise the same in the presence of the accused in court before retiring to the jury room.
- (2) When the jury retire to consider their verdict, the clerk of court shall enclose the jury in a room by themselves and neither he nor any other person shall be present with the jury after they are enclosed.
- (3) No person shall visit the jury on the pretext of further information, of resolving any doubt or on any other pretext or for any other purpose whatever; nor shall the jury come out of the jury room for any cause whatever or adjourn until they return their verdict except where they may wish to have a direction from the judge or to make any request regarding any matter in the cause as, for example, to make available any production for examination by the jury.
- (4) If any prosecutor or other person contravenes the provisions of this section, the accused shall be acquitted of the crime with which he is charged.

154 Oral verdicts to be returned by juries

The verdict of the jury, whether the jury are unanimous or not, shall be returned orally by the foreman of the jury unless the court shall direct a written verdict to be returned:

Provided that where the jury are not unanimous in their verdict, the foreman shall announce that fact so that the relative entry may be made in the record; and provided also that after the jury are enclosed, none of the jurors shall be allowed to separate or to hold communication with other persons until their verdict shall have been returned in their presence by the foreman.

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155 Verdicts may be returned by juries without retiring

It shall be lawful for the court to receive a verdict from a jury orally through the foreman of the jury after consultation in the jury box, although the said verdict be not arrived at after the jury shall have been enclosed, and to cause the same to be taken down and recorded; and, in a case where the jury retire and are enclosed to consider their verdict, it shall also be lawful for the court to receive such verdict orally through the foreman of the jury, in presence of the panel, provided the judge is then sitting in court, so that the jury may straightaway repair to the presence of the court attended by an officer of the court.

156 Interruption of trial for verdict in earlier trial

- (1) When in any criminal trial the jury shall have retired to consider their verdict, and, owing to delay in returning their verdict or for other sufficient reason, the diet in another criminal cause has been called, then, subject to the following provisions of this section, it shall be lawful to interrupt the proceedings in such other cause—
 - (a) in order to receive the verdict of the jury in the preceding trial, and thereafter to dispose of the cause either by passing sentence upon the panel, or by postponing sentence, or by assailing the panel, as the case may be;
 - (b) to give a direction to the jury in the preceding trial upon any matter upon which the jury may wish a direction from the judge or to hear any request from the jury regarding any matter in the cause, as, for example, to make available any production for examination by the jury.
- (2) Whether in any cause interruption shall be allowed shall be a matter in the discretion of the judge who presides at the trial.
- (3) In no case shall the verdict of the jury in the preceding trial be returned, or sentence be imposed upon the panel, or any direction be asked or given, or any request be heard or granted, in the presence of the jury in the interrupted trial, but in every case such jury shall be directed to retire by the presiding judge.
- (4) In the case of any such interruption a minute of continuation of the diet of the interrupted trial shall be entered in the minute book of the court, and it shall be sufficient that the minute shall bear that the diet be continued until later in the same day without further specification of time, or to the following or a subsequent day as the court may direct.
- (5) The court may remand the jury in the preceding trial, and order them to be re-enclosed and to prepare a verdict in writing.
- (6) On the interrupted trial being resumed the diet shall be called de novo.

157 Interruption of trial for plea or sentence in another cause

- (1) Where in any cause the diet of which has not been called, the panel shall intimate through his counsel to the clerk of court that he is prepared to tender a plea of guilty as libelled or such qualified plea as the Crown is prepared to accept, or where a cause is remitted to the High Court for sentence in which the panel has pleaded guilty under section 102 of this Act, then, subject to the following provisions of this section, any trial (other than a trial for murder) then proceeding may be interrupted for the purpose of receiving such plea or dealing with said remitted cause and pronouncing sentence or otherwise disposing of any such cause.

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- (2) In the case of any such interruption an entry will be duly made in the minute book of the court continuing the diet of the interrupted trial until later in the same day without further specification of time, or to the following or a subsequent day as the court may direct.
- (3) In any such interposed cause, the plea of the panel shall not be tendered or accepted, nor sentence passed, in the presence of the jury in the interrupted trial, but said jury if not already retired shall be directed by the presiding judge to retire.

158 No proceeding under section 156 or 157 of this Act to be deemed an irregularity

In any case provided for by section 156 or 157 of this Act the interruption thereby occasioned in the proceedings of the court shall not be deemed any irregularity, nor entitle the panel to take any objection to the proceedings.

159 Previous convictions

- (1) A previous conviction may not be libelled as an aggravation of an offence.
- (2) Where a person is convicted of an offence, the court may have regard to any previous conviction in respect of that person in deciding on the disposal of the case.
- (3) Nothing in this section shall affect the sentence which a court may pass on a second or subsequent conviction.

160 Laying of previous convictions before jury

- (1) Previous convictions against the accused shall not be laid before the jury, nor shall reference be made thereto in presence of the jury before the verdict is returned.
- (2) Nothing in this section shall prevent the prosecutor from laying before the jury evidence of previous convictions where, by the existing law, it is competent to lead evidence of such previous convictions as evidence in causa in support of the substantive charge, or where the accused shall lead evidence to prove previous good character.
- (3) It shall not be necessary for the jury to return a verdict finding whether previous convictions against the accused have been proved or not.

161 Laying of previous convictions before judge

- (1) 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 subsection (2) or (4) of section 68 of this Act.
- (2) On the conviction of the accused it shall be competent for the court to amend a notice of previous convictions so laid by deletion or alteration for the purpose of curing any error or defect therein:

Provided that no such amendment shall be made to the prejudice of the accused.

- (3) Where any such intimation as is mentioned in section 68 of this Act is given by the accused, it shall be competent to prove any previous conviction included therein in

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the manner set forth in section 162 of this Act, and the provisions of the said section shall apply accordingly.

- (4) Any conviction which is admitted in evidence by the court shall be entered in the record of the trial.
- (5) Nothing in this section or in section 68 of this Act shall prevent evidence of previous convictions being led in any case where such evidence is competent in support of a substantive charge.

162 Extract convictions to be received and manner of proof

- (1) An extract conviction of any crime committed in any part of the United Kingdom, bearing to be under the hand of the officer in use to give out such extract conviction, shall be received in evidence without being sworn to by witnesses.
- (2) It shall be competent to prove by a witness or witnesses such previous conviction, or any facts relevant to the admissibility of the same, although the name of any such witness is not included in the list served on the accused ; and the accused shall be entitled to examine witnesses in regard thereto.
- (3) An official of any prison in which the accused may have been confined on such conviction shall be a competent and sufficient witness to prove the application thereof to the accused, although he may not have been present in court at the trial to which such conviction relates.

163 Extract conviction to be issued by clerk having record copy of indictment

Where the accused is convicted on indictment in the sheriff court of any crime and an extract of that conviction is subsequently required in evidence, such extract shall be issued by the clerk of the court having the custody of the record copy of the indictment although the plea of the accused may have been taken and the sentence on him pronounced in another court.

164 Proof of previous convictions by fingerprints

- (1) A previous conviction may be proved against any person in any criminal proceedings by the production of such evidence of the conviction as is mentioned in this section and by showing that his fingerprints and those of the person convicted are the fingerprints of the same person.
- (2) A certificate purporting to be signed by or on behalf of the Chief Constable of Strathclyde or the Commissioner of Police of the Metropolis, containing particulars relating to a conviction extracted from the criminal records kept by the person by or on whose behalf the certificate is signed, and certifying that the copies of the fingerprints contained in the certificate are copies of the fingerprints appearing from the said records to have been taken in pursuance of regulations for the time being in force under section 11 of the Prisons (Scotland) Act 1952, or under section 16 of the Prison Act 1952, from the person convicted on the occasion of the conviction or on the occasion of his last conviction, shall be sufficient evidence of the conviction or, as the case may be, of his last conviction and of all preceding convictions and that the copies of the fingerprints produced on the certificate are copies of the fingerprints of the person convicted.

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- (3) Where a person has been apprehended and detained in the custody of the police in connection with any criminal proceedings, a certificate purporting to be signed by the chief constable concerned or a person authorised on his behalf, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.
- (4) A certificate purporting to be signed by or on behalf of the governor of a prison or of a remand centre in which any person has been detained in connection with any criminal proceedings, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.
- (5) A certificate purporting to be signed by or on behalf of the Chief Constable of Strathclyde, and certifying that the fingerprints, copies of which are certified as aforesaid by or on behalf of the Chief Constable or the Commissioner of Police of the Metropolis to be copies of the fingerprints of a person previously convicted and the fingerprints certified by or on behalf of a chief constable or a governor as aforesaid, or otherwise shown, to be the fingerprints of the person against whom the previous conviction is sought to be proved, are the fingerprints of the same person, shall be sufficient evidence of the matter so certified.
- (6) The method of proving a previous conviction authorised by this section shall be in addition to any other method of proving the conviction.

Procedure at trial involving children

165 Child under 14 not to be in court during trial of another person

No child under 14 years of age (other than an infant in arms) shall be permitted to be present in court during the trial of any other person charged with an offence, or during any proceedings preliminary thereto, except during such time as his presence is required as a witness or otherwise for the purposes of justice; and any child present in court when under this section he is not to be permitted to be so shall be ordered to be removed:

Provided that nothing in this section shall authorise the and other persons required to attend at any court for purposes connected with their employment.

166 Power to clear court while child is giving evidence in certain cases

- (1) Where, in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, a person who, in the opinion of the court, is a child is called as a witness, the court may direct that all or any persons, not being members or officers of the court or parties to the case, their counsel or solicitors, or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of that witness:

Provided that nothing in this section shall authorise the exclusion of bona fide representatives of a newspaper or news agency.

- (2) The powers conferred on a court by this section shall be in addition and without prejudice to any other powers of the court to hear proceedings in camera.

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167 Power to proceed with case in absence of person under 17

Where, in any proceedings relating to any of the offences mentioned in Schedule 1 to this Act, the court is satisfied that the attendance before the court of any person under the age of 17 years in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of that person.

168 Power of court, in respect of certain offences against a child, to refer child to reporter

Any court by or before which a person is convicted of having committed in respect of a child any of the offences mentioned in Schedule 1 to this Act or any offence under section 21 of the Children and Young Persons (Scotland) Act 1937 may refer the child to the reporter of the local authority in whose area the child resides and certify that the said offence shall be a ground established for the purposes of Part III of the Social Work (Scotland) Act 1968.

169 Power to prohibit publication of certain matter

- (1) In relation to any proceedings in any court, the court may direct that—
 - (a) no newspaper report of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any person under the age of 17 years concerned in the proceedings, either as being the person by or against or in respect of whom the proceedings are taken, or as being a witness therein;
 - (b) no picture shall be published in any newspaper as being or including a picture of any person under the age of 17 years so concerned in the proceedings ;except in so far (if at all) as may be permitted by the direction of the court.
- (2) Any person who publishes any matter in contravention of any such direction shall on summary conviction be liable in respect of each offence to a fine not exceeding £50.
- (3) This section shall, with the necessary modifications, apply in relation to sound and television broadcasts as it applies in relation to newspapers.
- (4) In this section, references to a court shall not include a court in England or Wales.

170 Age of criminal responsibility

It shall be conclusively presumed that no child under the age of eight years can be guilty of any offence.

171 Presumption and determination of age of child

- (1) Where a person charged with an offence is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a child, the court shall make due inquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case, but an order or judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court, and the age presumed or declared by the court to be the age of the person so brought before it shall, for the purposes of this Act or the Children and Young Persons (Scotland) Act 1937, be deemed to be the

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true age of that person, and, where it appears to the court that the person so brought before it has attained the age of 17 years, that person shall for the purposes of this Act or the Children and Young Persons (Scotland) Act 1937 be deemed not to be a child.

- (2) The court in making any inquiry in pursuance of the foregoing subsection shall have regard to the application of the provisions of section 30(1) of the Social Work (Scotland) Act 1968 but an order or judgment of the court shall not be invalidated by any subsequent proof that the court was not informed that at the material time the person was subject to a supervision requirement or that his case had been referred to a children's hearing under Part V of that Act.
- (3) Where in any indictment for any offence under the Children and Young Persons (Scotland) Act 1937 or any of the offences mentioned in Schedule 1 to this Act, except an offence under the Criminal Law Amendment Act, 1885, it is alleged that the person by or in respect of whom the offence was committed was a child or was under or had attained any specified age, and he appears to the court to have been at the date of the commission of the alleged offence a child, or to have been under or to have attained the specified age, as the case may be, he shall for the purposes of this Act or the Children and Young Persons (Scotland) Act 1937 be presumed at that date to have been a child or to have been under or to have attained that age, as the case may be, unless the contrary is proved.
- (4) Where, in any indictment for any offence under the Children and Young Persons (Scotland) Act 1937 or any of the offences mentioned in Schedule 1 to this Act, it is alleged that the person in respect of whom the offence was committed was a child or was a young person, it shall not be a defence to prove that the person alleged to have been a child was a young person or the person alleged to have been a young person was a child in any case where the acts constituting the alleged offence would equally have been an offence if committed in respect of a young person or child respectively.
- (5) Where a person is charged with an offence under the Children and Young Persons (Scotland) Act 1937 in respect of a person apparently under a specified age, it shall be a defence to prove that the person was actually of or over that age.
- (6) In subsection (3) of this section, references to a child (other than a child charged with an offence) shall be construed as references to a child under the age of 17 years ; but except as aforesaid references in this section to a child shall be construed as references to a child within the meaning of section 462 of this Act.

172 Welfare of child

livery court in dealing with a child who is brought before it as an offender shall have regard to the welfare of the child and shall in a proper case take steps for removing him from undesirable surroundings.

173 Reference and remit of children's cases by courts to children's hearings

- (1) Where a child who is not subject to a supervision requirement is charged with an offence and pleads guilty to, or is found guilty of, that offence the court—
 - (a) instead of making an order on that plea or finding, may remit the case to the reporter of the local authority to arrange for the disposal of the case by a children's hearing; or

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- (b) on that plea or finding may request the reporter of the local authority to arrange a children's hearing for the purposes of obtaining their advice as to the treatment of the child.
- (2) Where a court has acted in pursuance of paragraph (b) of the foregoing subsection, the court, after consideration of the advice received from the children's hearing may, as it thinks proper, itself dispose of the case or remit the case as aforesaid.
- (3) Where a child who is subject to a supervision requirement is charged with an offence and pleads guilty to, or is found guilty of, that offence the court shall request the reporter of the local authority to arrange a children's hearing for the purpose of obtaining their advice as to the treatment of the child, and on consideration of that advice may, as it thinks proper, itself dispose of the case or remit the case as aforesaid.
- (4) Where a court has remitted a case to the reporter under this section, the jurisdiction of the court in respect of the child shall cease, and his case shall stand referred to a children's hearing.
- (5) Nothing in the provisions of this section shall apply to a case in respect of an offence the sentence for which is fixed by law.

Procedure at trial of persons suffering from mental disorder

174 Insanity in bar of trial or as the ground of acquittal

- (1) Where any person charged on indictment with the commission of an offence is found insane so that the trial of that person upon the indictment cannot proceed, or if in the course of the trial of any person so indicted it appears to the jury that he is insane, the court shall direct a finding to that effect to be recorded.
- (2) Where in the case of any person charged as aforesaid evidence is brought before the court that that person was insane at the time of doing the act or making the omission constituting the offence with which he is charged and the person is acquitted, the court shall direct the jury to find whether the person was insane at such time as aforesaid, and to declare whether the person was acquitted by them on account of his insanity at that time.
- (3) Where the court has directed that a finding be recorded in pursuance of subsection (1) of this section, or where a jury has declared that a person has been acquitted by them on the ground of his insanity in pursuance of the last foregoing subsection, the court shall order that the person to whom that finding or that acquittal relates shall be detained in a State hospital or such other hospital as for special reasons the court may specify.
- (4) An order for the detention of a person in a hospital under this section shall have the like effect as a hospital order (within the meaning of section 175(3) of this Act) together with an order restricting his discharge, made without limitation of time; and where such an order is given in respect of a person while he is in the hospital, he shall be deemed to be admitted in pursuance of, and on the date of, the order.
- (5) Where it appears to a court that it is not practicable or appropriate for the accused to be brought before it for the purpose of determining whether he is insane so that his trial cannot proceed, then, if no objection to such a course is taken by or on behalf of the accused, the court may order that the case be proceeded with in his absence.

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175 Power of court to order hospital admission or guardianship

- (1) Where a person is convicted in the High Court or the sheriff court of an offence, other than an offence the sentence for which is fixed by law, punishable by that court with imprisonment, and the following conditions are satisfied, that is to say—

- (a) the court is satisfied, on the written or oral evidence of two medical practitioners (complying with the provisions of section 176 of this Act) that the offender is suffering from mental disorder of a nature or degree which, in the case of a person under 21 years of age, would warrant his admission to a hospital or his reception into guardianship under Part IV of the Mental Health (Scotland) Act 1960, and
- (b) the court is of opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section,

the court may by order authorise his admission to and detention in such hospital as may be specified in the order or, as the case may be, place him under the guardianship of such local authority or of such other person approved by a local authority as may be so specified:

Provided that, where his case is remitted by the sheriff to the High Court for sentence under any enactment, the power to make an order under this subsection shall be exercisable by that court.

- (2) Where it appears to the prosecutor in any court before which a person is charged with an offence that the person may be suffering from mental disorder, it shall be the duty of such prosecutor to bring before the court such evidence as may be available of the mental condition of that person.
- (3) An order for the admission of a person to a hospital (in this Act, referred to as "a hospital order") shall not be made under this section in respect of an offender unless the court is satisfied that that hospital, in the event of such an order being made by the court, is available for his admission thereto within 28 days of the making of such an order.
- (4) A State hospital shall not be specified in a hospital order in respect of the detention of a person unless the court is satisfied, on the evidence of the medical practitioners which is taken into account under paragraph (a) of subsection (1) of this section, that the offender, on account of his dangerous, violent or criminal propensities, requires treatment under conditions of special security, and cannot suitably be cared for in a hospital other than a State hospital.
- (5) An order placing a person under the guardianship of a local authority or of any other person (in this Act referred to as "a guardianship order") shall not be made under this section unless the court is satisfied that that authority or person is willing to receive that person into guardianship.
- (6) A hospital order or guardianship order shall specify the form of mental disorder, being mental illness or mental deficiency or both, from which, upon the evidence taken into account under paragraph (a) of subsection (1) of this section, the offender is found by the court to be suffering; and no such order shall be made unless the offender is described by each of the practitioners, whose evidence is taken into account as aforesaid, as suffering from the same form of mental disorder, whether or not he is also described by either of them as suffering from the other form.

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- (7) Where an order is made under this section, the court shall not pass sentence of imprisonment or impose a fine or make a probation order in respect of the offence, but may make any other order which the court has power to make apart from this section; and for the purposes of this subsection " sentence of imprisonment" includes any sentence or order for detention.

176 Requirements as to medical evidence

- (1) Of the medical practitioners whose evidence is taken into account under section 175(1) (a) of this Act, at least one shall be a practitioner approved for the purposes of section 27 of the Mental Health (Scotland) Act 1960 by a Health Board as having special experience in the diagnosis or treatment of mental disorder.
- (2) For the purposes of the said section 175(1)(a) a report in writing purporting to be signed by a medical practitioner may, subject to the provisions of this section, be received in evidence without proof of the signature or qualifications of the practitioner; but the court may, in any case, require that the practitioner by whom such a report was signed be called to give oral evidence.
- (3) Where any such report as aforesaid is tendered in evidence, otherwise than by or on behalf of the accused, then—
- (a) if the accused is represented by counsel or solicitor, a copy of the report shall be given to his counsel or solicitor;
 - (b) if the accused is not so represented, the substance of the report shall be disclosed to the accused or, where he is a child under 16 years of age, to his parent or guardian if present in court;
 - (c) in any case, the accused may require that the practitioner by whom the report was signed be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by or on behalf of the accused;
- and where the court is of opinion that further time is necessary in the interests of the accused for consideration of that report, or the substance of any such report, it shall adjourn the case.
- (4) For the purpose of calling evidence to rebut the evidence contained in any such report as aforesaid, arrangements may be made by or on behalf of an accused person detained in a hospital for his examination by any medical practitioner, and any such examination may be made in private.

177 Supplementary provisions as to hospital orders

The court by which a hospital order is made may give such directions as it thinks fit for the conveyance of the patient to a place of safety and his detention therein pending his admission to the hospital within the period of 28 days referred to in section 175(3) of this Act; but a direction for the conveyance of a patient to a residential establishment provided by a local authority under Part IV of the Social Work (Scotland) Act 1968 shall not be given unless the court is satisfied that that authority is willing to receive the patient therein.

178 Power of court to restrict discharge from hospital

- (1) Where a hospital order is made in respect of a person, and it appears to the court, having regard to the nature of the offence with which he is charged, the antecedents

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

of the person and the risk that as a result of his mental disorder he would commit offences if set at large, that it is necessary for the protection of the public so to do, the court may, subject to the provisions of this section, further order that the person shall be subject to the special restrictions set out in section 60(3) of the Mental Health (Scotland) Act 1960, either without limit of time or during such period as may be specified in the order.

- (2) An order under this section (in this Act referred to as " an order restricting discharge ") shall not be made in the case of any person unless the medical practitioner approved by the Health Board for the purposes of section 27 of the Mental Health (Scotland) Act 1960, whose evidence is taken into account by the court under section 175(1)(a) of this Act, has given evidence orally before the court.
- (3) Where an order restricting the discharge of a patient is in force, a guardianship order shall not be made in respect of him; and where the hospital order relating to him ceases to have effect by virtue of section 58(4) of the Mental Health (Scotland) Act 1960 on the making of another hospital order, that order shall have the same effect in relation to the order restricting discharge as the previous hospital order, but without prejudice to the power of the court making that other hospital order to make another order restricting discharge to have effect on the expiration of the previous such order.