



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PART I

SOLEMN PROCEDURE

CONVICTION AND SENTENCE

Adjournment and remand

179 Power of court to adjourn a case before sentence

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

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

180 Remand for inquiry into physical or mental condition

(1) Without prejudice to any powers exercisable by a court under the last foregoing section, where a person is charged before a court with an offence punishable with imprisonment, and the court is satisfied that he did the act or made the omission charged but is of opinion that an inquiry ought to be made into his physical or mental condition before the method of dealing with him is determined, the court shall remand him in custody or on bail for such period or periods, no single period exceeding three weeks, as the court thinks necessary to enable a medical examination and report to be made.

(2) Where a person is remanded on bail under this section, bail shall be found by bail bond, and it shall be a condition of the bond that he shall—

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- (a) undergo a medical examination by a duly qualified medical practitioner or, where the inquiry is into his mental condition and the bond so specifies, two such practitioners; and
- (b) for the purpose attend at an institution or place, or on any such practitioner specified in the bond and, where the inquiry is into his mental condition, comply with any directions which may be given to him for the said purpose by any person so specified or by a person of any class so specified ;

and, if arrangements have been made for his reception, it may be a condition of the bond that the person shall, for the purpose of the examination, reside in an institution or place specified as aforesaid, not being an institution or place to which he could have been remanded in custody, until the expiry of such period as may be so specified or until he is discharged therefrom, whichever first occurs.

- (3) Where a person remanded on bail under this section fails to comply with any such condition of the bond as is mentioned in the last foregoing subsection, the bail may be forfeited.
- (4) On exercising the powers conferred by this section the court shall—
 - (a) where the person is remanded in custody, send to the institution or place in which he is detained, and
 - (b) where the person is released on bail, send to the institution or place at which or the person by whom he is to be examined,

a statement of the reasons for which the court is of opinion that an inquiry ought to be made into his physical or mental condition, and of any information before the court about his physical or mental condition.

Admonition and discharge

181 Admonition

A court may, if it appears to meet the justice of the case, dismiss with an admonition any person found guilty by the court of any offence.

182 Absolute discharge

Where a person is convicted of an offence (other than an offence the sentence for which is fixed by law) the court, if it is of opinion, having regard to the circumstances, including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate may, instead of sentencing him, make an order discharging him absolutely.

Probation

183 Probation

- (1) Where a person is convicted of an offence (other than an offence the sentence for which is fixed by law), the court, if it is of opinion having regard to the circumstances, including the nature of the offence and the character of the offender, that it is expedient to do so, may instead of sentencing him make a probation order, that is to say an order requiring the offender to be under supervision for a period to be specified in the order of not less than one nor more than three years.

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- (2) A probation order shall be as nearly as may be in the form prescribed by Act of Adjournal, and shall name the local authority area in which the offender resides or is to reside and the order shall make provision for the offender to be under the supervision of an officer of the local authority of that area, or, where the offender resides or is to reside in a local authority area in which the court has no jurisdiction the court shall name the appropriate court (being such a court as could have been named in any amendment of the order in accordance with the provisions of Schedule 5 to this Act) in the area of residence or intended residence, and the court last mentioned shall require the local authority for that area to arrange for the offender to be under the supervision of an officer of that authority.
- (3) Subject to the provisions of Schedule 5 to this Act relating to probationers who change their residence, an offender in respect of whom a probation order is made shall be required to be under the supervision of an officer of the local authority as aforesaid.
- (4) Subject to the provisions of the next following section, a probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition by him of the offence or the commission of other offences.
- (5) Without prejudice to the generality of the last foregoing subsection, a probation order may include requirements relating to the residence of the offender:
Provided that—
 - (a) before making an order containing any such requirements, the court shall consider the home surroundings of the offender; and
 - (b) where the order requires the offender to reside in any institution or place, the name of the institution or place and the period for which he is so required to reside shall be specified in the order, and that period shall not extend beyond 12 months from the date of the requirement or beyond the date when the order expires.
- (6) Before making a probation order, the court shall explain to the offender in ordinary language the effect of the order (including any additional requirements proposed to be inserted therein under subsection (4) or (5) of this section or under the next following section) and that if he fails to comply therewith or commits another offence during the probation period he will be liable to be sentenced for the original offence and the court shall not make the order unless the offender expresses his willingness to comply with the requirements thereof.
- (7) The clerk of the court by which a probation order is made or of the appropriate court, as the case may be, shall cause copies thereof to be given to the officer of the local authority who is to supervise the probationer, to the probationer, and to the person in charge of any institution or place in which the probationer is required to reside under the probation order.

184 Probation orders requiring treatment for mental condition

- (1) Where the court is satisfied, on the evidence of a registered medical practitioner approved for the purposes of section 27 of the Mental Health (Scotland) Act 1960, that the mental condition of an offender is such as requires and may be susceptible to treatment but is not such as to warrant his detention in pursuance of a hospital order under Part V of that Act, or under this Act, the court may, if it makes a probation

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order, include therein a requirement that the offender shall submit, for such period not extending beyond 12 months from the date of the requirement as may be specified therein, to treatment by or under the direction of a registered medical practitioner with a view to the improvement of the offender's mental condition.

(2) The treatment required by any such order shall be such one of the following kinds of treatment as may be specified in the order, that is to say—

- (a) treatment as a resident patient in a hospital within the meaning of the Mental Health (Scotland) Act 1960, not being a State hospital within the meaning of the Act;
- (b) treatment as a non-resident patient at such institution or place as may be specified in the order; or
- (c) treatment by or under the direction of such registered medical practitioner as may be specified in the order;

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

(3) A court shall not make a probation order containing such a requirement as aforesaid unless it is satisfied that arrangements have been made for the treatment intended to be specified in the order, and, if the offender is to be treated as a resident patient, for his reception.

(4) While the probationer is under treatment as a resident patient in pursuance of a requirement of the probation order, any officer responsible for his supervision shall carry out the supervision to such extent only as may be necessary for the purpose of the discharge or amendment of the order.

(5) Where the medical practitioner by whom or under whose direction a probationer is being treated for his mental condition in pursuance of a probation order is of opinion that part of the treatment can be better or more conveniently given in or at an institution or place not specified in the order, being an institution or place in or at which the treatment of the probationer will be given by or under the direction of a registered medical practitioner, he may, with the consent of the probationer, make arrangements for him to be treated accordingly; and the arrangements may provide for the probationer to receive part of his treatment as a resident patient in an institution or place notwithstanding that the institution or place is not one which could have been specified in that behalf in the probation order.

(6) Where any such arrangements as are mentioned in the last foregoing subsection are made for the treatment of a probationer—

- (a) the medical practitioner by whom the arrangements are made shall give notice in writing to any officer responsible for the supervision of the probationer, specifying the institution or place in or at which the treatment is to be carried out; and
- (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the probation order.

(7) Subsections (2), (3) and (4) of section 176 of this Act shall apply for the purposes of this section as if for the reference in the said subsection (2) to section 175(1)(a) of this Act there were substituted a reference to subsection (1) of this section.

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

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185 Discharge and amendment of probation orders

- (1) The provisions of Schedule 5 to this Act shall have effect in relation to the discharge and amendment of probation orders.
- (2) Where, under section 186 of this Act, a probationer is sentenced for the offence for which he was placed on probation, the probation order shall cease to have effect.

186 Failure to comply with requirement of probation order

- (1) If, on information on oath from the officer supervising the probationer, it appears to the court by which the order was made or to the appropriate court that the probationer has failed to comply with any of the requirements of the order, that court may issue a warrant for the arrest of the probationer, or may, if it thinks fit, instead of issuing such a warrant in the first instance, issue a citation requiring the probationer to appear before the court at such time as may be specified in the citation.
- (2) If it is proved to the satisfaction of the court before which a probationer appears or is brought in pursuance of the last foregoing subsection that he has failed to comply with any of the requirements of the probation order, the court may—
 - (a) without prejudice to the continuance in force of the probation order, impose a fine not exceeding £20; or
 - (b)
 - (i) where the probationer has been convicted for the offence for which the order was made, sentence him for that offence;
 - (ii) where the probationer has not been so convicted, convict him and sentence him as aforesaid; or
 - (c) vary any of the requirements of the probation order, so however that any extension of the probation period shall terminate not later than three years from the date of the probation order.
- (3) A fine imposed under this section in respect of a failure to comply with the requirements of a probation order shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by or in respect of a conviction or a penalty imposed on a person summarily convicted.
- (4) A probationer who is required by a probation order to submit to treatment for his mental condition shall not be deemed for the purpose of this section to have failed to comply with that requirement on the ground only that he has refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances.
- (5) Without prejudice to the provisions of section 187 of this Act, a probationer who is convicted of an offence committed during the probation period shall not on that account be liable to be dealt with under this section for failing to comply with any requirement of the probation order.

187 Commission of further offence

- (1) If it appears to the court by which a probation order has been made (or to the appropriate court) that the probationer to whom the order relates has been convicted by a court in any part of Great Britain of an offence committed during the probation period and has been dealt with for that offence, the first-mentioned court (or the appropriate court) may issue a warrant for the arrest of the probationer, or may, if it thinks fit, instead of issuing such a warrant in the first instance issue a citation requiring the

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probationer to appear before that court at such time as may be specified in the citation, and on his appearance or on his being brought before the court, the court may, if it thinks fit, deal with him under section 186(2)(b) of this Act.

- (2) Where a probationer is convicted by the court which made the probation order (or by the appropriate court) of an offence committed during the probation period, that court may, if it thinks fit, deal with him under section 186(2)(b) of this Act for the offence for which the order was made as well as for the offence committed during the period of probation.

188 Probation orders relating to persons residing in England

- (1) Where the court by which a probation order is made under section 183 of this Act is satisfied that the offender has attained the age of 17 years and resides or will reside in England, subsection (2) of the said section shall not apply to the order, but the order shall contain a requirement that he be under the supervision of a probation officer appointed for or assigned to the petty sessions area in which the offender resides or will reside ; and that area shall be named in the order.
- (2) Where a probation order has been made under section 183 of this Act and the court in Scotland by which the order was made or the appropriate court is satisfied that the probationer has attained the age of 17 years and proposes to reside or is residing in England, the power of that court to amend the order under Schedule 5 to this Act shall include power to insert the provisions required by subsection (1) of this section; and the court may so amend the order without summoning the probationer and without his consent.
- (3) A probation order made or amended by virtue of this section may, notwithstanding section 184(8) of this Act, include a requirement that the probationer shall submit to treatment for his mental condition, and—
- (a) subsections (1), (3) and (7) of the said section 184 and section 3(2) of the Powers of Criminal Courts Act 1973 (all of which regulate the making of probation orders which include any such requirement) shall apply to the making of an order which includes any such requirement by virtue of this subsection as they apply to the making of an order which includes any such requirement by virtue of section 184 of this Act and section 3 of the said Act of 1973 respectively; and
 - (b) subsections (4) to (6) of section 3 of the said Act of 1973 (functions of supervising officer and medical practitioner where such a requirement has been imposed) shall apply in relation to a probationer who is undergoing treatment in England in pursuance of a requirement imposed by virtue of this subsection as they apply in relation to a probationer undergoing such treatment in pursuance of a requirement imposed by virtue of that section.
- (4) Sections 185(1) and 186(1) of this Act shall not apply to any order made or amended under this section; but subject as hereinafter provided the provisions of the Powers of Criminal Courts Act 1973 (except section 8 of that Act) shall apply to the order as if it were a probation order made under section 2 of that Act:

Provided that section 6(2)(a), (3)(d) and (6) of that Act shall not apply to any such order and section 6(4) and (5) of that Act shall have effect respectively in relation to any such order as if for the first reference in section 6(4) to the Crown Court there were substituted a reference to a court in Scotland and as if for the second such reference therein and for both such references in section 6(5) there were substituted references

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to the court in Scotland by which the probation order was made or amended under this section.

- (5) If it appears on information to a justice acting for the petty sessions area for which the supervising court within the meaning of the Powers of Criminal Courts Act 1973 acts that a person in whose case a probation order has been made or amended under this section has been convicted by a court in any part of Great Britain of an offence committed during the period specified in the order, he may issue a summons requiring that person to appear, at the place and time specified therein, before the court in Scotland by which the probation order was made or, if the information is in writing and on oath, may issue a warrant for his arrest, directing that person to be brought before the last-mentioned court.
- (6) If a warrant for the arrest of a probationer issued under section 187 of this Act by a court is executed in England, and the probationer cannot forthwith be brought before that court, the warrant shall have effect as if it directed him to be brought before a magistrates' court for the place where he is arrested; and the magistrates' court shall commit him to custody or release him on bail (with or without sureties) until he can be brought or appear before the court in Scotland.
- (7) The court by which a probation order is made or amended in accordance with the provisions of this section shall send three copies of the order to the clerk to the justices for the petty sessions area named therein, together with such documents and information relating to the case as it considers likely to be of assistance to the court acting for that petty sessions area.
- (8) Where a probation order which is amended under subsection (2) of this section is an order to which the provisions of this Act apply by virtue of section 10 of the Powers of Criminal Courts Act 1973 (which relates to probation orders under that Act relating to persons residing in Scotland) then, notwithstanding anything in that section or this section, the order shall, as from the date of the amendment, have effect in all respects as if it were an order made under section 2 of that Act in the case of a person residing in England.

189 Further provisions as to probation orders

- (1) Where the court by which a probation order is made under section 183 of this Act or subsection (6) of this section is satisfied that the person to whom the order relates is under the age of 17 years and resides or will reside in England, subsection (2) of the said section 183 shall not apply to the order but the order shall name the petty sessions area in which that person resides or will reside and the court shall send notification of the order to the clerk to the justices for that area.
- (2) Where a probation order has been made under section 183 of this Act or subsection (6) of this section and the court which made the order or the appropriate court is satisfied that the person to whom the order relates is under the age of 17 years and proposes to reside or is residing in England, the power of that court to amend the order under Schedule 5 to this Act shall include power, without summoning him and without his consent, to insert in the order the name of the petty sessions area aforesaid ; and where the court exercises the power conferred on it by virtue of this subsection it shall send notification of the order to the clerk aforesaid.
- (3) A court which sends a notification to a clerk in pursuance of the foregoing provisions of this section shall send to him with it three copies of the probation order in question

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and such other documents and information relating to the case as it considers likely to be of assistance to the juvenile court mentioned in the following subsection.

(4) It shall be the duty of the clerk to whom a notification is sent in pursuance of the foregoing provisions of this section to refer the notification to a juvenile court acting for the petty sessions area named in the order, and on such a reference the court—

- (a) may make a supervision order under the Children and Young Persons Act 1969 in respect of a person to whom the notification relates; and
- (b) if it does not make such an order, shall dismiss the case.

(5) A supervision order made by virtue of the last foregoing subsection shall not include a requirement authorised by section 12 of the said Act of 1969 unless the supervised person is before the court when the supervision order is made, and in relation to a supervision order made by virtue of that subsection—

- (a) section 15 of that Act shall have effect as if, in subsection (4), paragraph (b) and the words following it were omitted; and
- (b) section 17(a) of that Act shall have effect as if the second reference to the supervision order were a reference to the probation order in consequence of which the supervision order is made ;

and when a juvenile court disposes of a case referred to it in pursuance of the last foregoing subsection, the probation order in consequence of which the reference was made shall cease to have effect.

(6) The court which, in pursuance of subsection (1) of section 73 of the Social Work (Scotland) Act 1968, considers a case referred to it in consequence of a notification under paragraph (i) of that subsection (which relates to a case in which a person subject to a supervision order made by virtue of this section moves to Scotland)—

- (a) may, if it is of opinion that the person to whom the notification relates should continue to be under supervision, make a probation order in respect of him for a period specified in the order; and
- (b) if it does not make such an order, shall dismiss the case;

and when the court disposes of a case in pursuance of this subsection the supervision order aforesaid shall cease to have effect.

(7) Notwithstanding any provision to the contrary in section 183 of this Act, a probation order made by virtue of the last foregoing subsection which includes only requirements having the like effect as any requirement or provision of the supervision order to which the notification relates may be made without summoning the person to whom the notification relates and without his consent, and shall specify a period of supervision which shall expire not later than the date on which that supervision order would have ceased to have effect by the effluxion of time ; and, except as aforesaid, the provisions of this Act shall apply to that probation order.

(8) In this and the last foregoing section " petty sessions area " has the same meaning as in the said Act of 1969.

190 Supplementary provisions as to probation

(1) Any court, on making a probation order, may, if it thinks that such a course is expedient for the purpose of the order, require the offender to give security for his good behaviour.

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

191 Effects of probation and absolute discharge

- (1) Subject as hereinafter provided, a conviction of an offence for which an order is made under this Part of this Act placing the offender on probation or discharging him absolutely shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of laying it before a court as a previous conviction in subsequent proceedings for another offence:

Provided that where an offender, being not less than 16 years of age at the time of his conviction of an offence for which he is placed on probation as aforesaid, is subsequently sentenced under this Act for that offence, the provisions of this subsection shall cease to apply to the conviction.

- (2) Without prejudice to the foregoing provisions of this section, the conviction of an offender who is placed on probation or discharged absolutely as aforesaid shall in any event be disregarded for the purposes of any enactment which imposes any disqualification or disability upon convicted persons, or authorises or requires the imposition of any such disqualification or disability.
- (3) The foregoing provisions of this section shall not affect—
- (a) any right of any such offender as aforesaid to appeal against his conviction ; or
 - (b) the operation, in relation to any such offender, of any enactment which was in force as at the commencement of section 9 (3)(b) of the Criminal Justice (Scotland) Act 1949 and is expressed to extend to persons dealt with under section 1(1) of the Probation of Offenders Act 1907 as well as to convicted persons.
- (4) Where a person charged with an offence has at any time previously been placed on probation or discharged absolutely in respect of the commission by him of an offence it shall be competent, in the proceedings for that offence, to bring before the court the probation order or order of absolute discharge in like manner as if the order were a conviction.

192 Probation reports

Where a report by an officer of a local authority is made to any court (other than a court whose procedure is regulated by rules made under section 366(2) of this Act) with a view to assisting the court in determining the most suitable method of dealing with any person in respect of an offence, a copy of the report shall be given by the clerk of the court to the offender or his solicitor:

Provided that if the offender is under 16 years of age and is not represented by counsel or a solicitor, a copy of the report need not be given to him but shall be given to his parent or guardian if present in court.

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Penalties for statutory offences

193 Power to mitigate penalties

In proceedings in respect of the contravention of any statute or order, where each contravention involves any of the following punishments, namely, imprisonment, the imposition of a fine, the finding of caution for good behaviour or otherwise, either singly or in combination with imprisonment or fine, the court shall have in addition to any other powers conferred by Act of Parliament the following powers, viz.:—

- (1) to reduce the period of imprisonment:
- (2) to substitute for imprisonment (either with or without caution for good behaviour, not exceeding an amount of £150 and a period of 12 months a fine as provided in the following table:—

<i>Period of imprisonment ...</i>	<i>Amount of fine.</i>
Not exceeding three months	Not exceeding £100.
Exceeding three months but not exceeding six months	Not exceeding £200.
Exceeding six months but not exceeding one year	Not exceeding £400.
Over one year	Such fine as the court may, in its discretion, decide

- (3) to substitute the finding of caution not exceeding the amount of £150 and the period of 12 months for a fine or imprisonment:
- (4) to reduce the amount of any fine:
- (5) to dispense with the finding of caution:

Provided that,

- (i) where any Act carries into effect a treaty, convention, or agreement with a foreign state, and such treaty, convention, or agreement stipulates for a fine of minimum amount, the court shall not be entitled by virtue of this section to reduce the amount of such fine below that minimum amount;
- (ii) this section shall not apply to proceedings taken under any Act relating to any of Her Majesty's regular or auxiliary forces.

Fines

194 Time for payment

The court may allow time for the payment of any fine, or for the finding of caution.

195 Payment by instalments

- (1) Where a court imposes a fine on a person convicted, the court may, either at the same or at any subsequent time, order payment of the fine by instalments of such amounts, and at such times, as it may think fit, and where any instalment is not paid at the time

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so ordered, that person shall be liable to imprisonment for such period as bears to the period specified in default of payment of the fine the same proportion, as nearly as may be, as the sum of the unpaid instalments bears to the total amount of the fine.

- (2) Where in pursuance of subsection (1) of this section a person is imprisoned in default of payment of any instalment of a fine, and there is paid to the governor of the prison in which the said person is imprisoned a sum in part satisfaction of the sum of the unpaid instalments of the said fine, the term of imprisonment of the said person shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which he was sentenced as the sum so paid bears to the sum for which he is liable.
- (3) Where a court has imposed a fine on a person convicted and has ordered payment of the fine by instalments in accordance with the terms of subsection (1) of this section, the court may at any time before imprisonment has followed on the sentence, without requiring the attendance of the accused, reduce the amount, or allow further time for the payment, of any instalment (whether the time for payment thereof has or has not expired), or order payment of the fine, so far as unpaid, by instalments of smaller amounts or at longer intervals than originally ordered.
- (4) The High Court may by Act of Adjournal regulate the procedure to be followed in cases arising under this section.
- (5) Schedule 6 to this Act shall apply for the purposes of this section.

196 Fines, etc., may be enforced in other district

Any sentence or decree for any fine or expenses pronounced by any sheriff court may be enforced against the person or effects of any party against whom any such sentence or decree shall have been awarded in any other sheriff court district, as well as in the district where such sentence or decree is pronounced:

Provided that such sentence or decree, or an extract thereof, shall be first produced to and indorsed by the sheriff of such other district competent to have pronounced such sentence or decree in such other district.

197 Imprisonment in default of payment of fine

Where the accused is found liable to a fine, the court may, whether or not the enactment under which the fine is imposed provides any method for its recovery, ordain the accused to be imprisoned in the event of failure to pay the fine, either immediately or within such period as the court may fix; but such imprisonment shall not exceed the maximum period applicable to the fine under section 199 of this Act.

198 Substitution of custody for imprisonment where a child defaults on fine

Where a child would, if he were an adult, be liable to be imprisoned in default of payment of any fine, damages, or expenses, the court may, if it considers that none of the other methods by which the case may legally be dealt with is suitable, order that the child be detained for such period, not exceeding one month, as may be specified in the order in a place chosen by the local authority in whose area the court is situated.

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199 Period of imprisonment for non-payment of fine

The maximum period of imprisonment that may be imposed in default of the payment of a fine imposed on conviction shall be as follows:—

<i>Amount of Fine</i>	<i>Period of Imprisonment</i>
Not exceeding £20	Three months.
Exceeding £20 but not exceeding £100	Four months.
Exceeding £100 but not exceeding £500	Six months.
Exceeding £500	Twelve months.

200 Discharge from imprisonment to be specified

All warrants of imprisonment for payment of a fine, or for finding of caution, shall specify a period at the expiry of which the person sentenced shall be discharged, notwithstanding such fine shall not have been paid, or caution found.

201 Payment of fine in part by prisoner

- (1) Where a person committed to prison or otherwise detained for failure to pay a fine imposed by a court of solemn jurisdiction pays to the governor of the prison, under conditions prescribed by rules made under the Prisons (Scotland) Act 1952, any sum in part satisfaction of the fine, the term of imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which the prisoner is sentenced as the sum so paid bears to the total amount of the fine.
- (2) In this section references to a prison and to the governor thereof shall include respectively references to any other place in which a person may be lawfully detained in default of payment of a fine, and to an officer in charge thereof.

202 Remission of fine where young offender detained

Where, in the case of an offender detained in a Borstal institution, detention centre or any place under an order made by virtue of section 206 or 413 of this Act, or under supervision following release therefrom, who has not made payment of a fine imposed before his being so detained, it appears to the Secretary of State that remission of the fine might assist the rehabilitation of the offender, he may, after consultation where practicable with the judge by whom or the presiding chairman of the court by which sentence was passed, remit that fine in whole or in part.

203 Fines payable to H.M. Exchequer

Any fine imposed in the High Court upon the accused, and upon a juror for non-attendance, and any forfeiture for nonappearance of a party, witness or juror in the High Court shall be payable to and recoverable by the proper officer in Exchequer for Her Majesty's use, unless in a case where the High Court shall, by the sentence awarding the said fine, order the same or any part thereof to be otherwise disposed of.

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Borstal training

204 Borstal training

- (1) Where a person who is not less than 16 but under 21 years of age is convicted of an offence punishable with imprisonment, and the court is satisfied having regard to his character and previous conduct, and to the circumstances of the offence, that it is expedient for his reformation and the prevention of crime that he should undergo a period of training in a Borstal institution, the court may, subject to subsection (5) of this section, pass a sentence of Borstal training in lieu of any other sentence.
- (2) Before a sentence of Borstal training is passed the court shall call for and consider a report on the offender's physical and mental condition and his suitability for such a sentence, which report it shall be the duty of the Secretary of State to cause to be furnished to the court.
- (3) If on consideration of a report furnished in pursuance of subsection (2) of this section the court, either ex proprio motu or on the application of either party, thinks it expedient to do so, it may require any person concerned in the preparation of the report or with knowledge of matters dealt with in the report to appear with a view to his examination on oath regarding any of the matters dealt with in the report, and such person may be examined or cross-examined accordingly.
- (4) A copy of any report furnished under subsection (2) of this section shall be given by the clerk of the court to the offender or his solicitor at least two clear days before the diet at which the sentence is to be passed.
- (5) The power of a court to pass a sentence of Borstal training under subsection (1) of this section shall not be exercised in the case of any person on whom such a sentence has previously been imposed and who has served any part thereof.

Imprisonment, etc.

205 Life imprisonment for murder

- (1) No person shall suffer death for murder, and a person convicted of murder shall, subject to section 206(1) of this Act, be sentenced to imprisonment for life.
- (2) On sentencing any person convicted of murder to imprisonment for life the High Court may at the same time declare the period which it recommends to the Secretary of State as the minimum period which in its view should elapse before the Secretary of State orders the release of that person on licence under section 61 of the Criminal Justice Act 1967.
- (3) For the purpose of any proceedings on or subsequent to a person's trial on a charge of capital murder, that charge and any plea or finding of guilty of capital murder shall be treated as being or having been a charge, or a plea or finding of guilty, of murder only; and if on 9th November 1965 a person was under sentence of death for murder, the sentence shall be treated as having been a sentence of imprisonment for life.

206 Punishment of person under 18

- (1) A person convicted of murder who appears to the court to have been under the age of 18 years at the time the murder was committed shall not be sentenced to imprisonment

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for life ; but in lieu thereof the court shall (notwithstanding anything in this or in any other Act) sentence him to be detained during Her Majesty's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the Secretary of State may direct.

- (2) Where a child is convicted and the court is of opinion that none of the other methods of dealing with the child is suitable, the court may sentence him to be detained for such period as may be specified in the sentence; and where such a sentence has been passed, the child shall during that period be liable to be detained in such place and on such conditions as the Secretary of State may direct.

207 Restriction on imprisonment of person under 17

No court shall impose imprisonment on a person under 17 years of age.

208 Restriction on detention of person under 21

- (1) No court shall impose detention on a person under 21 years of age, unless the court is of opinion that no other method of dealing with him is appropriate.
- (2) For the purpose of determining in pursuance of the provisions of subsection (1) of this section whether any other method of dealing with a person mentioned therein is appropriate, the court shall obtain information about that person's circumstances from an officer of a local authority or otherwise and shall consider that information; and the court shall take into account any information before it which is relevant to his character and to his physical and mental condition.
- (3) Where in the case of a person who is of or over 16 years of age but less than 21 years of age the court is of opinion as aforesaid, and either—
- (a) if the person has been convicted of an offence punishable with imprisonment, is satisfied, having considered all the circumstances of the case, that neither a sentence of Borstal training nor a sentence of detention in a detention centre should be imposed ; or
 - (b) would have power but for this section to impose imprisonment otherwise than by sentence ;

it shall, subject to the provisions of this Act, instead of imposing a term of imprisonment upon him impose detention in a young offenders institution for a term not exceeding the term for which he could have been imprisoned.

- (4) For the purposes of any reference in this section to a term of imprisonment or to a term of detention in a young offenders institution, consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.

209 Detention in detention centre

- (1) Subject to the provisions of this section, in any case where a person who is not less than 16 but under 21 years of age is convicted of an offence punishable with imprisonment, and the court has been notified by the Secretary of State that a detention centre is available for the reception from that court of persons of his class or description, it may pass on him a sentence of detention in that centre for a fixed term of three months.
- (2) A court shall not pass a sentence under this section in the case of a person who has served or is serving a sentence involving his detention for two months or more in a

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prison or in a young offenders institution or a sentence of Borstal training, or in the case of a person who has served a sentence of detention in a detention centre, unless the court is of the opinion that, having regard to special considerations arising out of the circumstances of the case and the character of the offender, this method of dealing with him is the most appropriate.

- (3) Where it appears to the Secretary of State that a person detained in a detention centre is unfit for such detention by reason of his health, without prejudice to any other powers he may have in the matter, he may, after consultation where practicable with the judge by whom or the presiding chairman of the court by which the sentence was passed, release that person; and he shall then be required to be under supervision in accordance with section 11(1) of the Criminal Justice (Scotland) Act 1963.

210 Term of detention in a detention centre

- (1) The term for which a person may be detained in a detention centre shall not exceed three months at a time; and accordingly no court may pronounce an order the effect of which would be that a person would be liable to be detained for more than that period.
- (2) Where a court has before it a person convicted of an offence punishable with imprisonment who is serving a sentence of detention in a detention centre or who has been sentenced to and has not yet started to serve such a sentence as aforesaid, it may pass either of the following sentences (subject to the requirements of any enactment relating to those sentences)—
 - (a) a sentence of detention in a young offenders institution, or, if the person is of or over 21 years of age, a sentence of imprisonment, for a period not exceeding the aggregate of the unexpired portion of the sentence of detention in a detention centre and the maximum period of detention in a young offenders institution or of imprisonment, as the case may be, which the court may impose for the offence of which it has convicted the person; or
 - (b) a sentence of Borstal training;

and in that event the sentence of detention in a detention centre shall cease to have effect.

211 Recall to Borstal on re-conviction

- (1) Where a person sentenced to Borstal training, being under supervision after his release from a Borstal institution, is convicted of an offence punishable with imprisonment, the court may, instead of dealing with him in any other manner, make an order for his recall.
- (2) An order for the recall of a person made as aforesaid shall have the like effect as an order for recall made by the Secretary of State under section 33(4) of the Prisons (Scotland) Act 1952.

212 Recall to young offenders institution on re-conviction

- (1) Where a person sentenced to detention in a young offenders institution, being under supervision after his release from such an institution, is convicted of an offence punishable with imprisonment, the court may, instead of dealing with him in any other manner, make an order for his recall.

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- (2) An order for the recall of a person made as aforesaid shall have the like effect as an order for recall made by the Secretary of State under section 12 of the Criminal Justice (Scotland) Act 1963.

213 Revocation of licence by court

- (1) If a person subject to a licence under section 60 or 61 of the Criminal Justice Act 1967 is convicted of an offence punishable on indictment with imprisonment, the court may, whether or not it passes any other sentence on him, revoke the licence.
- (2) The power conferred on a court by this section to revoke the licence of any person released under section 60 of the Criminal Justice Act 1967 after being transferred to either part of Great Britain from another part of the United Kingdom, the Channel Islands or the Isle of Man shall be exercisable notwithstanding anything in section 26(6) of the Criminal Justice Act 1961 (exclusion of supervision of persons so transferred).

214 Return to prison in case of breach of supervision

- (1) If, on sworn information laid by or on behalf of the Secretary of State, it appears to the sheriff that a person, being under supervision under Schedule 1 to the Criminal Justice (Scotland) Act 1963, has failed to comply with any of the requirements imposed on him by his notice of supervision, the sheriff may issue a warrant for the arrest of that person or may, if he thinks fit, instead of issuing such a warrant in the first instance, issue a citation requiring the person to appear before him at such time as may be specified in the citation.
- (2) If it is proved to the satisfaction of the sheriff before whom a person appears or is brought in pursuance of the last foregoing subsection that the person has failed to comply with any of the requirements of the notice of supervision, the sheriff shall, unless having regard to all the circumstances of the case, he considers it unnecessary or inexpedient to do so, order that he be sent back to prison for such term as may be specified in that order, not exceeding whichever is the shorter of the following, that is to say—
- (a) a period of three months;
 - (b) a period equal to so much of the period of 12 months referred to in paragraph 1 of Schedule 1(1) to the Criminal Justice (Scotland) Act 1963 as was unexpired on the date on which proceedings were commenced.
- (3) Subject to the following provisions of this section, Part II of this Act shall apply in relation to proceedings for an order as aforesaid as it applies in relation to proceedings in respect of a summary offence, and references in Part II of this Act to an offence, trial, conviction or sentence shall be construed accordingly.
- (4) Proceedings for an order under subsection (2) of this section may be brought before a sheriff having jurisdiction in the area in which the supervising officer carries out his duties.
- (5) A warrant issued for the purposes of proceedings for an order under subsection (2) above may, if the person laying the information so requests, bear an endorsement requiring any constable charged with its execution to communicate with the Secretary of State before arresting the person under supervision if the constable finds that that

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person is earning an honest livelihood or that there are other circumstances which ought to be brought to the notice of the Secretary of State.

- (6) Where a person while under supervision under Schedule 1 to the Criminal Justice (Scotland) Act 1963 is convicted of an offence for which the court has power to pass sentence of imprisonment, the court may, instead of dealing with him in any other manner, make such an order as could be made by a sheriff under subsection (2) of this section in proceedings for such an order.
- (7) The Secretary of State may at any time release from prison a person who has been sent back to prison under subsection (2) or (6) of this section; and the provisions of this section and of the said Schedule shall apply to a person released by virtue of this subsection, subject to the following modifications :—
- (a) that the period of twelve months referred to in paragraph 1 of the said Schedule shall be calculated from the date of his original release ; and
 - (b) in relation to any further order for sending him back to prison under this section, the period referred to in subsection (2)(a) of this section shall be reduced by any time during which he has been detained by virtue of the previous order.
- (8) In any proceedings, a certificate purporting to be signed by or on behalf of the Secretary of State and certifying—
- (a) that a notice of supervision was given to any person in the terms specified in the certificate and on the date so specified; and
 - (b) either that no notice has been given to him under paragraph 3 of the said Schedule or that a notice has been so given in the terms specified in the certificate,
- shall be sufficient evidence of the matters so certified ; and the fact that a notice of supervision was given to any person shall be sufficient evidence that he was a person to whom section 14 of the Criminal Justice (Scotland) Act 1963 applies.
- (9) For the purposes of Part III of the Criminal Justice Act 1961, a person who has been sent back to prison under subsection (2) or (6) of this section, and has not been released again, shall be deemed to be serving part of his original sentence, whether or not the term of that sentence has in fact expired.

215 Legal custody

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

Miscellaneous provisions as to conviction, sentence, etc.

216 Art and part guilt of statutory offence

A person may be convicted of, and punished for, a contravention of any statute or order, notwithstanding that he was guilty of such contravention as art and part only.

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217 Form of sentence

- (1) In any case the sentence to be pronounced shall be announced by the judge in open court and shall be entered in the record in the form now in use in the High Court, and it shall not be necessary to read the entry of the sentence from the record.
- (2) In recording sentences of imprisonment, it shall be sufficient to minute the term of imprisonment to which the court sentenced the panel, without specifying the prison in which the sentence is to be carried out; and such entries of sentences, signed by the clerk of court, shall be full warrant and authority for all execution to follow thereon, and for the clerk to issue extracts thereof for carrying the same into execution or otherwise.
- (3) In extracting sentences of imprisonment, the extract may be in the form set out in an Act of Adjournal under this Act or as nearly as may be in such form.

218 Consideration of time spent in custody

A court, in passing a sentence of imprisonment or detention in a young offenders institution as defined in section 31(1)(d) of the Prisons (Scotland) Act 1952 on a person for any offence, shall, in determining the period of imprisonment or detention, have regard to any period of time spent in custody by that person on remand awaiting trial or sentence.

219 Deferred sentence

It shall be competent for a court to defer sentence after conviction for a period and on such conditions as the court may determine.

220 Capital sentence not competent under this Act

A capital sentence shall not be competent under this Act.

221 No penal servitude or hard labour

- (1) No person shall be sentenced by a court to penal servitude; and every enactment conferring power on a court to pass a sentence of penal servitude in any case shall be construed as conferring power to pass a sentence of imprisonment for a term not exceeding the maximum term of penal servitude for which a sentence could have been passed in that case immediately before 12th June 1950:

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

- (2) No person shall be sentenced by a court to imprisonment with hard labour; and every enactment conferring power on a court to pass a sentence of imprisonment with hard labour in any case shall be construed as conferring power to pass a sentence of imprisonment for a term not exceeding the term for which a sentence of imprisonment with hard labour could have been passed in that case immediately before 12th June 1950; and so far as any enactment requires or permits prisoners to be kept to hard labour it shall cease to have effect.

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222 No fees exigible

No fees or expenses of any description shall be exigible by the clerk or other officer of court from any person on whom an indictment shall have been served, unless the same shall form part of the sentence of the court; but the fees exigible from the prosecutor by such clerk or officer shall not be affected by the provisions of this section.

223 Forfeiture of property

- (1) Where a person is convicted of an offence and the court which passes sentence is satisfied that any property which was in his possession or under his control at the time of his apprehension—
- (a) has been used for the purpose of committing, or facilitating the commission of, any offence ; or
 - (b) was intended by him to be used for that purpose,
- that property shall be liable to forfeiture, and any property forfeited under this section shall be disposed of as the court may direct.
- (2) Any reference in this section to facilitating the commission of an offence shall include a reference to the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.

224 Warrant of search for forfeited articles

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

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

issue a warrant of search which may be executed according to law.

225 Interlocutors to be signed by clerk

In the High Court, interlocutors shall be distinctly minuted or entered in the record, and that entry shall be signed by the clerk.

226 Record copies to be inserted in books of adjournal of High Court

The record copies of indictments brought before the High Court, and the record copies of all printed proceedings in the said court, shall be inserted in the books of adjournal, either at their proper place in the body of such books, or at the end of the volume wherein the relative procedure is recorded, in which case they shall be distinctly referred to as so appended; and the books of adjournal so made up and completed shall be and be taken to be and be used as the books of adjournal of the said court.

227 Indictment to be inserted in record book in sheriff court

When an indictment in any sheriff court is either wholly or partly printed, a copy of it, either wholly or partly printed, shall be inserted in the record book of court, either in its proper place in the body thereof or at the end of the volume wherein the

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relative procedure is recorded, in which last case it shall be distinctly referred to as so appended.