



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PART II

SUMMARY PROCEDURE

Procedure prior to trial

294 Power of constable to take offenders into custody

- (1) Without prejudice to any other powers of arrest, any constable may take into custody, without warrant—
 - (a) any person who within his view commits any of the offences mentioned in Schedule 1 to this Act, if the constable does not know and cannot ascertain his name and address;
 - (b) any person who has committed, or whom he has reason to believe to have committed, any of the offences mentioned in Schedule 1 to this Act, if the constable does not know and cannot ascertain his name and address or has reasonable ground for believing that he will abscond.
- (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.

295 Chief constable may in certain cases accept bail

- (1) Upon the apprehension of any person charged with an offence which may be competently tried before a court of summary jurisdiction other than the sheriff court,

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it shall be lawful for the chief constable, or other officer of police having charge in the absence of the chief constable at any police office or station, to accept bail or deposit, by a surety or by such person, that such person shall appear for trial before such court, or before the sheriff court, at some time and place to be specified, and at all subsequent diets of court and to liberate the person so apprehended upon bail being found to an amount not exceeding £20 or upon the deposit of any money or article of value to the amount of the bail fixed.

- (2) On acceptance of deposit under the foregoing subsection the chief constable or other officer of police shall immediately enter the same in a book to be kept for the purpose, and grant an acknowledgment for the money or article so deposited, in which acknowledgment the time and place fixed for the accused's appearance shall be set forth.
- (3) The chief constable or other officer of police may refuse, in any such case as aforesaid, if he see cause, to accept bail or deposit; and such refusal, and the detention of the person so apprehended until his case is tried in the usual form, shall not subject the chief constable or other officer of police to any claim for damages, wrongous imprisonment, or claim of any other kind whatsoever.
- (4) It shall be lawful to liberate any such person as aforesaid without bail, or to discharge him, if the chief constable or other officer deem it proper so to do.
- (5) If any person fails to appear in redemption of his bail or deposit under this section, it may be forfeited and warrant may be granted for his apprehension.

296 Police liberation or detention of children arrested

- (1) Where a person who is apparently a child is apprehended, with or without warrant, and cannot be brought forthwith before a sheriff sitting summarily, a superintendent or inspector of police, or other officer of police of equal or superior rank, or the officer in charge of the police station to which he is brought, shall inquire into the case, and may liberate him on an obligation that he will attend at the hearing of the charge being entered into by him or his parent or guardian or on bail being found by him or his parent or guardian, for such an amount as will, in the opinion of the officer, secure his attendance at the hearing of the charge, and shall so liberate him unless—
 - (a) the charge is one of homicide or other grave crime ; or
 - (b) it is necessary in his interest to remove him from association with any reputed criminal or prostitute ; or
 - (c) the officer has reason to believe that his liberation would defeat the ends of justice.
- (2) Where a person who is apparently a child having been apprehended is not so liberated as aforesaid, the officer of police shall cause him to be detained in a place of safety other than a police station until he can be brought before a sheriff sitting summarily unless the officer certifies—
 - (a) that it is impracticable to do so ; or
 - (b) that he is of so unruly a character that he cannot safely be so detained ; or
 - (c) that by reason of his state of health or of his mental or bodily condition it is inadvisable so to detain him;

and the certificate shall be produced to the court before which he is brought.

- (3) Where a person who is apparently a child has been detained under this section and is not so liberated as aforesaid and it is decided not to proceed with the charge against him a constable shall so inform the reporter of the local authority for the area in which the child is detained, and the child may continue to be detained in a place of safety until the reporter has decided on the course that should be taken with regard to the child under the provisions of Part III of the Social Work (Scotland) Act 1968.
- (4) A child shall not continue to be detained under this section—
 - (a) where the reporter considers the child does not require compulsory measures of care,
 - (b) after the day on which a children's hearing first sit to consider his case in pursuance of section 37(4) of the Social Work (Scotland) Act 1968, or
 - (c) for a period exceeding seven days.

297 Committal of children to custody in place of safety

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

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

- (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.

298 All offences to be bailable

- (1) All offences shall be bailable, and any judge having jurisdiction to try the offence may, at his discretion, on the application of any person who has been charged with any offence, and after opportunity shall have been given to the prosecutor to be heard thereon, admit or refuse to admit such person to bail.
- (2) Such application shall be disposed of within 24 hours after its presentation to the judge, failing which the accused shall be forthwith liberated.

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

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

300 Appeal in respect of bail

- (1) Where an application for bail by a person charged with an offence under this Part of this Act is refused or where the applicant is dissatisfied with the amount of bail fixed, he may appeal to the High Court and that court may in its discretion order intimation to the prosecutor and, where an application for bail by any such person is granted, the prosecutor, if dissatisfied with the granting of bail or with the amount fixed may appeal in like manner and, subject as hereinafter provided, the applicant shall in such case not be liberated before such appeal is disposed of.
- (2) Notice in writing shall be immediately given by the party appealing under this section to the other party.
- (3) An appeal under this section shall be disposed of by the High Court or any Lord Commissioner of Justiciary in court or in chambers after such inquiry and hearing of the parties as shall seem just.
- (4) When an appeal is taken by the prosecutor under this section either against the grant of bail or against the amount fixed, the applicant to whom bail has been granted shall, if the bail fixed shall have been found by him, be liberated after 72 hours, or where the place of application is in the Outer Hebrides or in Orkney or Zetland 96 hours, from the granting of the application, whether the appeal be disposed of or not, unless the High Court shall grant order for his further detention in custody. In computing the aforesaid periods, Sundays and public holidays, whether, general or court holidays, shall be excluded.
- (5) Notice by telegraph to the governor of the prison of the issue under the last foregoing subsection of an order within the time aforesaid bearing to be sent by the Clerk of Justiciary or the Crown Agent or, if the complaint is brought in a court other than the sheriff court, by the prosecutor shall be sufficient warrant for the detention of the applicant pending the arrival of the order in due course of post.
- (6) Where an appeal under this section by the prosecutor is refused, the High Court may award expenses against him, but no court or other fees shall be exigible from, and no expenses shall be awarded against, an applicant in respect of his application or of any appeal therein.

301 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.

302 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.

303 Caution and bail

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

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

(2) Bail may be found and forfeited, and the like procedure shall be competent in default of payment thereof as is hereinbefore provided with regard to caution; and any bail found shall continue in force until the final determination of the case or until the expiry of six months from the date when such bail is found, whichever shall first occur, notwithstanding that the diets may have been from time to time continued or deserted *pro loco et tempore*, or not called :

Provided that the cautioner shall be entitled to withdraw his bond of caution at any diet of the court at which the accused appears personally.

(3) Where, instead of being liberated on bail, the accused in a summary prosecution is liberated under a penalty in the event of his failure to appear at any future diet, and such penalty is declared to be forfeited, the amount thereof may be added to any other penalty subsequently imposed on him, or the court may pronounce a separate finding in respect of such penalty and may grant warrant for the imprisonment of the accused in the event of non-payment thereof.

304 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 cooperation in securing the child's good behaviour.

(2) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.

(3) Any sums ordered on forfeiture of any such security as aforesaid to be paid by a parent or guardian may be recovered from him by civil diligence or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child was charged.

305 Intimation to solicitor

In any proceedings under this Part of this Act the accused, if apprehended, shall immediately on apprehension be entitled, if he so desires, to have intimation sent to a solicitor, and to have a private interview with such solicitor prior to being brought before the court.

306 Separation of children from adults at courts, etc.

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

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

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

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

308 Notice to local authority of charge against a child

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

the court in the disposal of his case, and the report shall contain information, which the appropriate education authority shall have a duty to supply, as to the school record, health and character of the child.

309 Forms of procedure

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

310 Incidental applications

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

311 Complaint

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

on him before he is asked to plead, and a copy of any notice so served shall, where the judge is satisfied that the charge is proved, be laid before him by the prosecutor, and shall be entered in the record of the proceedings.

312 Form of the charge in complaint

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

- (a) a person accused may be named and designed according to the existing practice, or he may be named by the name given by him and designed as of the place given by him as his residence when he is examined on declaration, and it shall not be necessary to set forth any other name or names by which he may be known, or any other address or designation ;
- (b) it shall not be necessary to specify by any nomen juris the offence which is charged, but it shall be sufficient that the complaint sets forth facts relevant and sufficient to constitute an offence punishable on complaint;
- (c) when two or more persons are charged together with committing an offence punishable on complaint, it shall not be necessary to allege that " both and each or one or other," or that " all and each or one or more " of them committed the offence, or did or failed to do any particular act, but such alternatives shall be implied;
- (d) it shall not be necessary to state that a person accused is " guilty, actor or art and part", but such charge shall be implied;
- (e) it shall not be necessary to allege that any act of commission or omission therein charged was done or omitted to be done " wilfully " or " maliciously ", or " wickedly and feloniously ", or " falsely and fraudulently ", or " knowingly", or " culpably and recklessly ", or " negligently ", or in " breach of duty ", or to use such words as " knowing the same to be forged ", or " having good reason to know ", or " well knowing the same to have been stolen ", or to use any similar words or expressions qualifying any act charged, but such qualifying allegation shall be implied;
- (f) the latitude in use to be taken in stating time shall be implied in all statements of time where an exact time is not of the essence of the charge, and the latitude in use to be taken in stating any place by adding to the word " at ", or to the word " in ", the words " or near", or the words " or in the near neighbourhood thereof ", or similar words, shall be implied in all statements of place where the actual place is not of the essence of the charge, and where the circumstances of the offence charged make it necessary to take an exceptional latitude in regard to time or place it shall not be necessary to set forth such circumstances, or to set forth that the particular time or the particular place is to the prosecutor unknown ; provided that where exceptional latitude is taken, the court shall, if satisfied that such exceptional latitude was not reasonable in the circumstances of the case, give such remedy to the accused by adjournment of the trial or otherwise as shall seem just;
- (g) the latitude in use to be taken in describing quantities by the words " or thereby ", or the words " or part thereof ", or the words " or some other quantity to the prosecutor unknown " or similar words, shall be implied in all statements of quantities, and the latitude in use to be taken in stating details

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connected with the perpetration of any act regarding persons, things or modes by inserting general alternative statements followed by the words " to the prosecutor unknown " , or similar words, shall be implied ;

- (h) where in a complaint, whether raised under statute or at common law, buildings, goods, money, or property of any other description are mentioned, it shall not be necessary to allege the property or possession thereof to be in any person, official, corporation or company, or that the same were not the property of the accused, and the allegation that the same were not the property of the accused shall be implied where it is essential to the criminality of the charge;
- (i) where in a complaint or any list or inventory relative thereto any person is referred to, it shall be sufficient to describe him by his name and ordinary address, and it shall not be necessary to describe him as " now or lately " residing at such address, but such words shall be implied, and where goods, articles or things require to be described, it shall be sufficient to describe them in general terms without specifying the materials of which they are made, or any particulars which distinguish them from other goods, articles or things of a similar kind except in cases in which such particulars are essential to the constitution of the offence charged ;
- (j) the word " money " shall include all current coin of the realm, post office orders and postal orders, and bank or banker's notes, and it shall not be necessary to specify in relation to a sum of money whether such sum consisted of gold, silver or other coin, post office orders or postal orders, or bank or banker's notes, or any of them, but it shall be sufficient to state the sum as consisting of money ;
- (k) where any document requires to be referred to, it shall not be necessary to set forth the document or any part of it, but it shall be sufficient to refer to such document by a general description ;
- (l) criminal resetting of property shall not be limited to the -receiving of property taken by theft or robbery, but shall extend to the receiving of property appropriated by breach of trust and embezzlement, and by falsehood fraud and wilful imposition, and under any complaint charging the resetting of property dishonestly appropriated by any of these means, it shall not be necessary to set forth any details of the offence by which the dishonest appropriation was accomplished, but it shall be sufficient to set forth that the accused received such property, it having been dishonestly appropriated by theft or robbery, or by breach of trust and embezzlement, or by falsehood fraud and wilful imposition, as the case may be ;
- (m) under a complaint for robbery, or for theft, or for breach of trust and embezzlement, or for falsehood fraud and wilful imposition, a person accused may be convicted of reset; under a complaint for robbery, or for breach of trust and embezzlement, or for falsehood fraud and wilful imposition, a person accused may be convicted of theft; under a complaint for theft, a person accused may be convicted of breach of trust and embezzlement, or of falsehood fraud and wilful imposition, or may be convicted of theft, although the circumstances proved may in law amount to robbery.

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

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- (n) where two or more offences or acts constituting offences are charged cumulatively, it shall be lawful to convict of any one or more of them, and any part of what is charged in a complaint, constituting in itself an offence punishable on complaint, shall be deemed separable to the effect of making it lawful to convict of such offence, and where any offence is charged as having been committed with a particular intent or with particular circumstances of aggravation, it shall be lawful to convict of the offence without such intent or aggravation;
- (o) attempt to commit any offence punishable on complaint shall itself be an offence punishable on complaint, and under a complaint which charges a completed offence the accused may be lawfully convicted of an attempt to commit such offence; and under a complaint charging an attempt, the accused may be convicted of such attempt although the evidence be sufficient to prove the completion of the offence said to have been attempted; and under a complaint charging an offence which imports personal injury inflicted by the accused, resulting in death or serious injury to the person, the accused may be lawfully convicted of the assault or other injurious act, and may also be lawfully convicted of the aggravation that such assault or other injurious act was committed with intent to commit such offence ;
- (p) the description of any offence in the words of the statute or order contravened, or in similar words, shall be sufficient;
- (q) the statement that an act was done contrary to a statute or order shall imply a statement that the statute or order applied to the circumstances existing at the time and place of the offence, that the accused was a person bound to observe the same, that any necessary preliminary procedure had been duly gone through, and that all the circumstances necessary to a contravention existed; in the case of the contravention of an order, such statement shall imply a statement that the order was duly made, confirmed, published and generally made effectual according to the law applicable, and was in force at the time and place in question;
- (r) where the offence is created by more than one section of one or more statutes or orders, it shall be necessary to specify only the leading section or one of the leading sections;
- (s) it shall not be necessary for an offence punishable under any Act of Parliament to quote the Act of Parliament or any part of it, but it shall be sufficient to allege that the offence was committed contrary to such Act of Parliament, and to refer to the Act and any section of the Act founded on without setting forth the enactment at length;
- (t) where any act set forth in a complaint as contrary to any Act of Parliament is also criminal at common law, or where the facts proved under such a complaint do not amount to a contravention of the statute, but do amount to an offence at common law, it shall be lawful to convict of the common law offence;
- (u) when in a trial the evidence shall be sufficient to prove the identity of any person, corporation or company, or of any place, or of any thing, it shall not be a valid objection to the sufficiency of such evidence that any particulars set forth in regard thereto in the complaint have not been proved ;
- (v) any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany in the same section the description of the offence in the statute or order creating the offence, may be proved by the accused, but need not be specified or negated in the complaint, and no proof in relation to

such exception, exemption, proviso, excuse or qualification shall be required on behalf of the prosecution;

- (w) it shall be competent to include in one complaint both common law and statutory charges ;
- (x) where an offence is alleged to be committed in any special capacity, as by the holder of a licence, master of a vessel, occupier of a house or the like, the fact that the accused possesses the qualification necessary to the commission of the offence shall, unless challenged by preliminary objection before his plea is recorded, be held as admitted;
- (y) in any proceedings under the Merchant Shipping Acts it shall not be necessary to produce the official register of the ship referred to in the proceedings in order to prove the nationality of the ship, but the nationality of the ship as stated in the complaint shall, in the absence of evidence to the contrary, be presumed;
- (z) in offences inferring dishonest appropriation of property brought before a court whose power to deal with such offences is limited to cases in which the value of such property does not exceed £10 it shall be assumed, and it shall not be necessary to state in the charge, that the value of the property does not exceed that sum.

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

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

314 Orders of court on complaint

- (1) On any complaint under this Part of this Act being laid before a judge of the court in which the complaint is brought, he shall have power on the motion of the prosecutor—
 - (a) to pronounce an order of court assigning a diet for the disposal of the case to which the accused may be cited as after-mentioned;
 - (b) to grant warrant to apprehend the accused where this appears to the judge expedient;
 - (c) to grant warrant to search the person, dwelling-house and repositories of the accused and any place where he may be found for any documents, articles, or property likely to afford evidence of his guilt of, or guilty participation in, any

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offence charged in the complaint, and to take possession of such documents, articles or property;

- (d) to grant any other order of court or warrant or interim order of court of warrant which may be competent in the circumstances.
- (2) The power under the foregoing subsection to grant a warrant to apprehend the accused shall be exercisable notwithstanding that there is power whether at common law or under any Act to apprehend him without a warrant.
- (3) Where a diet has been fixed in a summary prosecution, it shall be competent for the court, on a joint application in writing by the parties or their solicitors, to discharge the diet so fixed and fix in lieu thereof an earlier or a later diet.

315 Citation

- (1) This Act shall be a sufficient warrant for the citation of the accused and witnesses in a summary prosecution to any ordinary sitting of the court or to any special diet fixed by the court or any adjournment thereof.
- (2) Such citation shall be in the form, as nearly as may be, of the appropriate form contained in Part IV of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournment under this Act and shall in the case of the accused proceed on an *induciae* of at least 48 hours unless in the special circumstances of the case the court fixes a shorter *induciae*.
- (3) The foregoing provisions of this section as to the citation of witnesses shall apply to the citation of witnesses for precognition by the prosecutor where a judge on the application of such prosecutor shall deem it expedient to grant warrant to cite witnesses for precognition in regard to any offence which may be competently tried in the court of that judge, and whether or not any person has at the time of such application been charged with such offence.

316 Manner of citation

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

- (3) It shall be deemed a legal citation of the accused to such a sitting or diet or adjourned sitting or diet as is mentioned in subsection (1) hereof, if the citation be signed by the prosecutor and sent by post in a registered envelope or through the recorded delivery service to the dwelling-house or place of business of such accused, or, if he has no known dwelling-house or place of business, to any other place in which he may at the time be resident:

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

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

317 Citation of probationer

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

318 Citation of offender

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

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

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

319 Citation by post

- (1) When the citation of any person other than a witness is effected by post in terms of any of the foregoing provisions of this Act, the *induciae* shall be reckoned from 24 hours after the time of posting.
- (2) It shall be sufficient evidence that a citation has been sent by post in terms of any of the foregoing provisions of this Act, if there is produced in court a written execution, signed by the person who signed such citation and in the appropriate form contained

in an Act of Adjournal under this Act, or as nearly as may be in such form, together with the post office receipt for the relative registered or recorded delivery letter.

320 Apprehension of witness

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

321 Warrants of apprehension and search

- (1) A warrant of apprehension or search may be in the form, as nearly as may be, of the appropriate form contained in Part IV of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act, and any warrant of apprehension or search shall, where it is necessary for its execution, imply warrant to officers of law to break open shut and lockfast places.
- (2) A warrant of apprehension of an accused person in such form as aforesaid shall imply warrant to officers of law to search for and to apprehend the accused, and to bring him before the court issuing the warrant, or before any other court competent to deal with the case, to answer to the charge on which such warrant is granted, and, in the meantime, until he can be so brought, to detain him in a police station house, police cell, or other convenient place.
- (3) A person apprehended under any such warrant as aforesaid or by virtue of the powers possessed at common law, or conferred by statute, shall wherever practicable be brought before a court competent to deal with the case either by way of trial or by way of remit to another court not later than in the course of the first lawful day after such person shall be taken into custody, such day not being a public or local holiday.
- (4) A warrant of apprehension or other warrant shall not be required for the purpose of bringing before the court an accused person who had been apprehended without a written warrant or who attends without apprehension in answer to any charge made against him.
- (5) A warrant of apprehension of a witness in the appropriate form shall imply warrant to officers of law to search for and apprehend the witness, and to detain him in a police station house, police cell, or other convenient place, until the date fixed for the hearing of the case, unless sufficient security be found, to the amount fixed in the warrant for the appearance of such witness at all diets of court.

322 Warrants for arrest of escaped prisoners and mental patients

- (1) On an application being made to a sheriff or justice alleging that any person is—
 - (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

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(retaking of mental patients who are absent without leave or have escaped from custody);

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

- (2) Where a person is brought before a sheriff in pursuance of a warrant for his arrest under this section, the sheriff shall, if satisfied that he is the person named in the warrant and if satisfied as to the facts mentioned in paragraph (a) or (b) of the foregoing subsection, order him to be returned to the prison or other institution where he is required or liable to be detained or, in the case of a convicted mental patient, order him to be kept in custody or detained in a place of safety pending his admission to hospital.
- (3) 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 330, 376, 378 or 379 of this Act in pursuance of a hospital order or transfer direction together with an order or direction restricting his discharge;

" 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.

323 Warrant to search for or remove a child

- (1) If, on an application to a justice by any person who, in the opinion of the justice, is acting in the interests of a child, it appears to the justice on information on oath that there is reasonable cause to suspect—
 - (a) that the child has been or is being assaulted, ill-treated, or neglected in any place within the jurisdiction of the justice, in a manner likely to cause him unnecessary suffering or injury to health, or
 - (b) that any offence mentioned in Schedule 1 to this Act has been or is being committed in respect of the child,

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

- (2) A child shall not continue to be detained under the last foregoing subsection—
 - (a) where the reporter considers the child does not require compulsory measures of care, or

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- (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.
 - (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.

324 Backing of certain warrants from the Isle of Man

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

325 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.
- (4) Nothing in this section affects the execution in Scotland of a warrant to which section 123 of the Bankruptcy Act 1914 applies.

326 Service of complaints, etc.

- (1) Any complaint, warrant, or other proceeding under this Part of this Act may without endorsement be served or executed at any place within Scotland by any officer of law, and such service or execution may be proved either by the oath in court of such officer

or by production of his written execution. The Indictable Offences Act 1848 and the Indictable Offences Act Amendment Act 1868 shall, for the purpose of this Part of this Act, apply to all offences which may be tried by the court issuing any competent warrant, order of court, or other process.

- (2) Nothing in section 6(3) (extent) of the Magistrates' Courts Act 1957 or in the Summary Jurisdiction (Process) Act 1881 shall be construed as precluding the service in Scotland, with a summons which is so served under the said Act of 1881, of any such notice or statement as is mentioned in subsection (1) of section 1 of the said Act of 1957 (plea of guilty in absence of accused).

327 Sheriff's warrant may be executed out of district

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

328 Adjournment for inquiry, etc.

A court of summary jurisdiction, in order to allow time for inquiry into any case, or for any other necessary cause, and without calling on the accused to plead to any charge against him, may from time to time continue the case for such reasonable time as may in the circumstances be necessary, not exceeding in all a period of seven days, or on special cause shown 21 days, from the date of the apprehension of the accused, and may liberate him on bail or commit him to prison, either without bail or with bail to an amount fixed by the court:

Provided that no judge shall be entitled to allow bail in a case which he is not competent to try.

329 Remand and committal of persons under 21

- (1) Where a court remands or commits for trial or for sentence a person under 21 years of age who is charged with or convicted of an offence and is not released on bail, 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

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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—
 - (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.

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

- (1) Where a court remands or commits for trial a person charged with any offence who appears to the court to be suffering from mental disorder, and the court is satisfied that a hospital is available for his admission and suitable for his detention, the court may, instead of remanding him in custody, commit him to that hospital.
- (2) Where any person is committed to a hospital as aforesaid, the hospital shall be specified in the warrant and, if the responsible medical officer is satisfied that he is suffering from mental disorder of a nature or degree which warrants his admission to a hospital under 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.

331 Statutory offences time-limit

- (1) Proceedings under this Part of this Act in respect of the contravention of any statute or order shall, unless the statute or order under which the proceedings are brought fixes any other period, be commenced within six months after the contravention occurred and, in the case of a continuous contravention, within six months after the last date of such contravention, and it shall be competent in such case in any prosecution to include the entire period during which the contravention has occurred.

- (2) A person shall not be summarily convicted of an offence mentioned in Schedule 1 to this Act unless the offence was wholly or partly committed within six months before the proceedings against him in respect of the offence were commenced; but, subject as aforesaid, evidence may be taken of acts constituting, or contributing to, the offence and committed at any previous time.
- (3) For the purposes of this section proceedings shall be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted, if such warrant is executed without undue delay.

332 Power to recover penalties

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

333 Offences by companies, etc.

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

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