



# Criminal Justice (Scotland) Act 1949

## 1949 CHAPTER 94

### PART I

#### POWERS AND PROCEEDINGS OF COURTS

##### *Discharge*

#### **1 Absolute discharge**

Where—

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

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

##### *Probation*

#### **2 Probation**

(1) Where—

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

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

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

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

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

Provided that—

- (a) before making an order containing any such requirements, the court shall consider the home surroundings of the offender; and
- (b) where the order requires the offender to reside in an approved probation hostel, an approved probation home or any other institution or place, the name of the institution or place and the period for which he is so required to reside shall be specified in the order, and that period shall not extend beyond twelve months from the date of the requirement or beyond the date when the order expires.
- (7) Before making a probation order, the court shall explain to the offender in ordinary language the effect of the order (including any additional requirements proposed to be inserted therein under subsection (5) or subsection (6) of this section or under the next following section) and that if he fails to comply therewith or commits another offence during the probation period he will be liable to be convicted of and sentenced for the original offence or, if that offence was tried on indictment, to be sentenced therefor, and the court shall not make the order unless the offender expresses his willingness to comply with the requirements thereof.

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- (8) The clerk of the court by which a probation order is made or of the appropriate court, as the case may be, shall cause copies thereof to be given to the probation officer or officers nominated in pursuance of subsection (2) of this section, to the probationer, to the probation committee for the probation area in which the probationer resides or is to reside and to the person in charge of any institution or place in which the probationer is required by the order to reside.
- (9) Where a probation order requires the probationer to reside in any institution or other place, not being—
- (a) an approved probation hostel or approved probation home; or
  - (b) an institution in which he is required to reside for the purposes of any such treatment as is mentioned in paragraph (a) or paragraph (b) of subsection (2) of the next following section,
- the court shall forthwith give notice of the terms of the order to the Secretary of State.

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

- (1) Where the court is satisfied, on the evidence of a registered medical practitioner appearing to the court to be experienced in the diagnosis of mental disorders, that the mental condition of an offender is such as requires and as may be susceptible to treatment but is not such as to justify his being certified as a lunatic under the Lunacy (Scotland) Act, 1862, or as a defective under the Mental Deficiency and Lunacy (Scotland) Act, 1913, the court may, if it makes a probation order, include therein a requirement that the offender shall submit, for such period not extending beyond twelve months from the date of the requirement as may be specified therein, to treatment by or under the direction of a registered medical practitioner with a view to the improvement of the offender's mental condition.
- (2) The treatment required by any such order shall be such one of the following kinds of treatment as may be specified in the order, that is to say—
- (a) treatment as a voluntary boarder under section fifteen of the Lunacy (Scotland) Act, 1866;
  - (b) treatment as a resident patient in such institution or place approved for the purposes of this section by the Secretary of State as may be specified in the order;
  - (c) treatment as a non-resident patient at such institution or place as may be specified in the order; or
  - (d) treatment by or under the direction of such registered medical practitioner as may be specified in the order;
- but except as aforesaid the nature of the treatment shall not be specified in the order.
- (3) A court shall not make a probation order containing such a requirement as aforesaid unless it is satisfied that arrangements have been or can be made for the treatment intended to be specified in the order, and, if the offender is to be treated as a voluntary boarder or as a resident patient, for his reception.
- (4) While the probationer is under treatment as a voluntary boarder or as a resident patient in pursuance of a requirement of the probation order, the probation officer or officers responsible for his supervision shall carry out the supervision to such extent only as may be necessary for the purpose of the discharge or amendment of the order.

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- (5) Where the medical practitioner by whom or under whose direction a probationer is being treated for his mental condition in pursuance of a probation order is of opinion that part of the treatment can be better or more conveniently given in or at an institution or place not specified in the order, being an institution or place in or at which the treatment of the probationer will be given by or under the direction of a registered medical practitioner, he may, with the consent of the probationer, make arrangements for him to be treated accordingly; and the arrangements may provide for the probationer to receive part of his treatment as a resident patient in an institution or place notwithstanding that the institution or place is not one which could have been specified in that behalf in the probation order.
- (6) Where any such arrangements as are mentioned in the last foregoing subsection are made for the treatment of a probationer—
- (a) the medical practitioner by whom the arrangements are made shall give notice in writing to the probation officer or officers responsible for the supervision of the probationer, specifying the institution or place in or at which the treatment is to be carried out; and
  - (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the probation order.
- (7) For the purposes of subsection (1) of this section, and subject as hereinafter provided, a report in writing as to the mental condition of an offender purporting to be signed by a registered medical practitioner experienced in the diagnosis of mental disorders may be received in evidence without proof of the signature, qualifications or experience of the practitioner and shall be deemed to apply to such offender:
- Provided that such a report shall not be so received unless the offender consents or, where he is under seventeen years of age, unless his parent or guardian consents or, if no parent or guardian can be found, unless he himself or his counsel or solicitor consents.
- (8) Where a person of whose mental condition evidence is received for the purposes of subsection (1) of this section (or, where that person is under seventeen years of age, his parent or guardian or, if no parent or guardian can be found, he or his counsel or solicitor) desires to call rebutting evidence, the court shall not make a probation order in his case containing any such requirement as is authorised by this section unless he, or his parent or guardian, or his counsel or solicitor, as the case may be, has been afforded an opportunity of calling such evidence.
- (9) Except as provided by this section, a court shall not make a probation order requiring a probationer to submit to treatment for his mental condition.

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

- (1) The provisions of the Second Schedule to this Act shall have effect in relation to the discharge and amendment of probation orders.
- (2) Where a probation order, whether as originally made or amended under the said Schedule, requires the probationer to reside in an approved probation hostel or home or other institution or place (otherwise than for the purpose of submitting to treatment for his mental condition as a voluntary boarder or resident patient) for a period extending beyond six months from the date of the requirement, the probation officer shall, as soon as may be after the expiration of six months after that date, report on the case to the court by which the probation order was made or to the appropriate court.

- (3) On receipt of any such report, the court shall review the probation order for the purpose of considering whether to cancel the requirement as to residence or reduce the period thereof, and may, if it thinks fit, amend the order accordingly without the necessity for any application in that behalf.
- (4) Where, under the following provisions of this Part of this Act, a probationer is sentenced for the offence for which he was placed on probation, the probation order shall cease to have effect.

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

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

## **6 Commission of further offence**

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

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

- (1) Where the court by which a probation order is made under section two of this Act is satisfied that the offender resides or will reside in England, subsection (2) of the said section shall not apply to the order, but the order shall contain a requirement that he be under the supervision of a probation officer appointed for or assigned to the petty sessional division in which the offender resides or will reside ; and that division shall be named in the order.
- (2) Where a probation order has been made under section two of this Act and the court in Scotland by which the order was made or the appropriate court is satisfied that the probationer proposes to reside or is residing in England, the power of that court to amend the order under the Second Schedule to this Act shall include power to omit therefrom the name of the probation officer named therein and to insert the provisions required by subsection (1) of this section ; and the court may so amend the order without summoning the probationer and without his consent.
- (3) Notwithstanding anything in the foregoing provisions of this Part of this Act an order as made or amended under this section shall not require the offender to reside in any institution, or to submit to treatment for his mental condition, but without prejudice to any power of a court in England to impose any such requirements under the next following subsection.
- (4) Subsections (1) to (3) of section four and subsection (1) of section five of this Act shall not apply to any order made or amended under this section ; but subject as hereinafter provided the provisions of the Criminal Justice Act, 1948 (except section eight of that Act) shall apply to the order as if it were a probation order made under section three of that Act:

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

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

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

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

- (1) Without prejudice to the provisions of subsection (2) of section fifty-nine of the Children and Young Persons (Scotland) Act, 1937 (which enables a court to order the parent or guardian of a child or young person to give security for his good behaviour) any court may, on making a probation order under this Part of this Act, if it thinks it expedient for the purpose of the reformation of the offender, require the offender, or if the offender is a child, his parent or guardian, or if the offender is a young person, the offender or his parent or guardian to give security for the good behaviour of the offender.
- (2) Security may be given under the last foregoing subsection by consignment with the clerk of the court or by entering into an undertaking to pay the amount, but not otherwise and such security may be forfeited and recovered in like manner as caution.

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

- (1) Subject as hereinafter provided, a conviction on indictment of an offence for which an order is made under this Part of this Act placing the offender on probation or discharging him absolutely shall be deemed not to be a conviction for any purpose

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other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender for an offence of which the first mentioned offence constitutes an aggravation:

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

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

## **10 Reports of probation officers**

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

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

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

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

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



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

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

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

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

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

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

## **14 Sentence for high treason**

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

## **15 Abolition of escheat, etc.**

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

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

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

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

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

### *Powers relating to young offenders*

## **17 Restriction on sentence of death**

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

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

## **18 Restriction on imprisonment**

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

- (4) His Majesty may by Order in Council prohibit courts from sentencing to imprisonment persons under the age of twenty-one years or such lower age as may be specified in the Order, and any such Order may be limited to particular classes of court or to persons of one of the sexes:

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

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

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

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

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

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

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

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

## **20 Borstal training**

- (1) Where a person who is not less than sixteen but under twenty-one years of age is convicted on indictment or is convicted summarily by a sheriff or a stipendiary magistrate of an offence punishable with imprisonment, and the court is satisfied having regard to his character and previous conduct, and to the circumstances of the

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offence, that it is expedient for his reformation and the prevention of crime that he should undergo a period of training in a Borstal institution, the court may, in lieu of any other sentence, pass a sentence of Borstal training.

- (2) A person sentenced to Borstal training shall be detained in a Borstal institution, and after his release therefrom be subject to supervision, in accordance with the provisions of the Fourth Schedule to this Act.
- (3) Before a sentence of Borstal training is passed the court shall call for and consider a report on the offender's physical and mental condition and his suitability for such a sentence, which report it shall be the duty of the Secretary of State to cause to be furnished to the court.
- (4) If on consideration of a report furnished in pursuance of the last foregoing subsection the court, either *ex proprio motu* or on the application of either party, thinks it expedient to do so, it may require any person concerned in the preparation of the report or with knowledge of matters dealt with in the report to appear with a view to his examination on oath regarding any of the matters dealt with in the report, and such person may be examined or cross-examined accordingly.
- (5) A copy of any report furnished under subsection (3) of this section shall be given by the clerk of the court to the offender or his solicitor at least two clear days before the diet at which the sentence is to be passed.

*Powers relating to persistent offenders*

## 21 Corrective training and preventive detention

- (1) Where a person who is not less than twenty-one years of age—
  - (a) is convicted on indictment of an offence punishable with imprisonment for a term of two years or more; and
  - (b) has been convicted on at least two previous occasions since he attained the age of seventeen of offences punishable on indictment with such a sentence,
 then, if the court is satisfied that it is expedient with a view to his reformation and the prevention of crime that he should receive training of a corrective character for a substantial time, followed by a period of supervision if released in accordance with the provisions of the Fifth Schedule to this Act before the expiry of his sentence, the court may pass, in lieu of any other sentence, a sentence of corrective training for such term of not less than two nor more than four years as the court may determine.
- (2) Where a person who is not less than thirty years of age—
  - (a) is convicted in the High Court of Justiciary of an offence punishable with imprisonment for a term of two years or more; and
  - (b) has been convicted on indictment on at least three previous occasions since he attained the age of seventeen of offences punishable with such a sentence and was on at least two of those occasions sentenced to Borstal training, imprisonment or corrective training;
 then, if the Court is satisfied that it is expedient for the protection of the public that he should be detained in custody for a substantial time, followed by a period of supervision if released in accordance with the provisions of the Fifth Schedule to this Act before the expiry of his sentence, the Court may pass, in lieu of any other sentence, a sentence of preventive detention for such term of not less than five nor more than fourteen years as the Court may determine.

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

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

- (1) Where a person is convicted on indictment of an offence punishable with imprisonment for a term of two years or more and that person—
  - (a) has been convicted on at least two previous occasions of offences for which he was sentenced to Borstal training or imprisonment; or
  - (b) has been previously convicted of an offence for which he was sentenced to corrective training,the court, if it sentences him to a term of imprisonment of twelve months or more, shall, unless having regard to the circumstances, including the character of the offender, it otherwise determines, order that he shall for a period of twelve months from his next discharge from prison be subject to the provisions of this section.
- (2) Where any such order as aforesaid has been made—
  - (a) the offender shall, on his next discharge from prison and thereafter from time to time, inform the appointed society of his address in accordance with such instructions as may be given to him by or on behalf of the society;
  - (b) if the offender fails to comply to the satisfaction of the appointed society with the aforesaid requirement to notify his address on his discharge, the society shall, and if he subsequently fails to keep the society informed of his address to their satisfaction, the society may, give notice of the failure to the Secretary

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of State, and shall if reasonably possible inform the offender that the notice has been given;

and as from the date on which any such notice has been given as aforesaid, the provisions of the Sixth Schedule to this Act shall apply to the offender.

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

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

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

- (1) Where it appears to the prosecutor in any court of summary jurisdiction before which a person is charged with an offence that the person is of unsound mind, it shall be the duty of such prosecutor to bring before the court such evidence as may be available of the mental condition of such person.
- (2) Where a person is charged summarily in the sheriff court with any act or omission constituting an offence punishable with imprisonment, and the court is satisfied that the person did the act or made the omission charged, and is satisfied on the evidence of two registered medical practitioners that the person is of unsound mind and is also satisfied that he is a proper person to be detained, the court shall—
  - (a) order that he be removed to and received and detained in such mental hospital as may be named in the order; or,
  - (b) if the court is satisfied on the evidence of two registered medical practitioners approved for the purpose by the General Board of Control for Scotland that the person by reason of his mental illness is in a state threatening danger to the lieges or offensive to public decency and cannot suitably be cared for in a mental hospital, order that he be removed to and received and detained in such State Mental Hospital as may be named in the order.
- (3) Where a sheriff is satisfied on the evidence of two registered medical practitioners approved for the purpose by the General Board of Control for Scotland that a person detained under an order made under paragraph (a) of the last foregoing subsection is in a state threatening danger to the lieges or offensive to public decency and cannot be suitably cared for in a mental hospital, the sheriff shall make an order that he be removed to and received and detained in such State Mental Hospital as may be named in the order, and the first-mentioned order shall cease to have effect.
- (4) An order made under paragraph (a) of subsection (2) of this section shall be of the like force and effect as an order made under section fourteen of the Lunacy (Scotland) Act, 1862, and an order made under paragraph (b) of the said subsection or under the last

foregoing subsection shall be of the like force and effect as if it were an order made under section fifteen of that Act and as if any reference in that section to a mental hospital included a reference to a State Mental Hospital.

- (5) Where a person is charged before a court of summary jurisdiction other than a sheriff court with any act or omission constituting an offence punishable with imprisonment, the court, if it appears to it that such person may be of unsound mind, shall remit him to the sheriff court in the manner provided by section nine of the Summary Jurisdiction (Scotland) Act, 1908, and the sheriff court shall, on any such remit being made, have the like power with regard to such person as if he had been charged before that court with the said act or omission.
- (6) The court by which an order is made under this section shall send to the mental hospital or, as the case may be, the State Mental Hospital named in the order such information in the possession of the court as it considers likely to be of assistance in dealing with the person to whom the order relates.
- (7) The foregoing provisions of this section shall, until the day appointed for the coming into force of section sixty-three of this Act, have effect with the substitution for any reference to a State Mental Hospital of a reference to the lunatic department of Perth Prison.

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

- (1) Where it appears to the prosecutor in any court before which a person is charged with an offence that the person is a defective within the meaning of the Mental Deficiency (Scotland) Acts, 1913 and 1940, it shall be the duty of such prosecutor to bring before the court such evidence as may be available of the mental condition of such accused person.
- (2) Where a person is convicted in the High Court of Justiciary or the sheriff court of any offence and the court is satisfied on the evidence of two registered medical practitioners one of whom shall be a medical practitioner approved for the purpose by the General Board of Control for Scotland that the person is a defective within the meaning of the Mental Deficiency (Scotland) Acts, 1913 and 1940, the court may (in lieu of dealing with him in any other manner) order that he be removed to and received and detained in such institution for mental defectives as may be named in the order or that he be placed under guardianship.
- (3) Where a person is charged before a court of summary jurisdiction, other than a sheriff court, with any offence, the court, if it appears to it that such person may be a defective within the meaning of the Mental Deficiency (Scotland) Acts, 1913 and 1940, shall remit him to the sheriff court in the manner provided by section nine of the Summary Jurisdiction (Scotland) Act, 1908, and the sheriff court shall, on any such remit being made, have the like power with regard to such person as if he had been charged before that court with the said offence.
- (4) The court by which an order is made under this section shall send to the institution named in the order such information in the possession of the court as it considers likely to be of assistance in dealing with the person to whom the order relates.
- (5) An order made under this section shall be of the like force and effect as a judicial order under the Mental Deficiency (Scotland) Acts, 1913 and 1940.

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- (6) Section nine of the Mental Deficiency and Lunacy (Scotland) Act, 1913 shall, in so far as it relates to persons charged with offences, cease to have effect.

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

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

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

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

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

*Adjournment, remand, etc.*

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

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

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

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

- (1) Without prejudice to any powers exercisable by a court under the last foregoing section, where a person is charged before a court with an offence punishable with imprisonment, and the court is satisfied that he committed the offence but is of opinion that an inquiry ought to be made into his physical or mental condition before the method of dealing with him is determined, the court shall remand him in custody or on bail for such period or periods, no single period exceeding three weeks, as the court thinks necessary to enable a medical examination and report to be made.
- (2) Where a person is remanded on bail under this section, bail shall be found by bail bond, and it shall be a condition of the bond that he shall undergo medical examination by a registered medical practitioner at such institution or place as may be specified in the bond or by such registered medical practitioner as may be so specified; and, if arrangements have been made for his reception, it may be a condition of the bond that



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the sperson shall, for the purpose of the examination, reside, for such period as may be specified, in an institution or place so specified, not being an institution or place to which he could have been remanded in custody.

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

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

- (5) Notwithstanding anything in the Lunacy (Scotland) Acts, 1857 to 1913, or the Mental Deficiency (Scotland) Acts, 1913 and 1940, a person who has been remanded on bail under this section may be received for the purposes of medical examination in a mental hospital within the meaning of the Lunacy (Scotland) Acts, 1857 to 1913, or in an institution for defectives within the meaning of the Mental Deficiency (Scotland) Acts, 1913 and 1940:

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

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

- (1) Where a court remands or commits for trial or for sentence a person under twenty-one years of age who is charged with or convicted of an offence and is not released on bail, then, except as otherwise expressly provided by this section, the following provisions shall have effect, that is to say—
  - (a) if he is under fourteen years of age, he shall be committed to a remand home;
  - (b) if he is not less than fourteen but under seventeen years of age, he shall be committed to a remand home unless the court certifies that he is of so unruly a character that he cannot safely be detained in a remand home or of so depraved a character that he is not fit to be so detained;
  - (c) if he is not less than seventeen years of age, or if the court certifies as mentioned in the last foregoing paragraph, and the court has been notified by the Secretary of State that a remand centre is available for the reception from that court of persons of his class or description, he shall be committed to a remand centre,  
instead of being committed to prison.
- (2) Where a person being not less than fourteen but under seventeen years of age is remanded in custody under the last foregoing section of this Act for an inquiry into his physical or mental condition, and the court is satisfied that facilities for such an inquiry during his detention in the remand home to which he would, but for this subsection, have been committed are not provided or otherwise made available under this Act,

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then if the court has been notified that a remand centre is available for the reception from that court of persons of his class or description, he shall be committed to a remand centre.

- (3) Where any person is committed to a remand home or a remand centre under any provision of this Act, the home or centre shall be specified in the warrant and he shall there be detained for the period for which he is remanded or until he is liberated in due course of law.
- (4) Where any person has been committed to a remand home under any provision of this Act, the court by which he was committed, or, if application cannot conveniently be made to that court, the sheriff having jurisdiction in the place where that court sat, may vary the commitment by substituting another remand home for that remand home; and if the person so committed is not less than fourteen years of age and it appears to the court that he is of so unruly a character that he cannot safely be detained in a remand home, or to be of so depraved a character that he is not a fit person to be so detained, the court may revoke the commitment and commit the said person—
  - (a) if the court has been notified that a remand centre is available for the reception from that court of persons of his class or description, to a remand centre; and
  - (b) if the court has not been so notified, to a prison.

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

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

- (1) Any British subject who in a country outside the United Kingdom does any act or makes any omission which if done or made in Scotland would constitute the crime of murder or of culpable homicide shall be guilty of the same crime and subject to the same punishment as if the act or omission had been done or made in Scotland.
- (2) Any British subject employed under His Majesty's Government in the United Kingdom in the service of the Crown who, in a foreign country, when acting or purporting to act in the course of his employment, does any act or makes any omission which if done or made in Scotland would constitute an offence punishable on indictment shall be guilty of the same offence, and subject to the same punishment, as if the act or omission had been done or made in Scotland.
- (3) A person may be proceeded against, indicted, tried and punished for an offence under this section in any county or place in Scotland in which he is apprehended or is in custody as if the offence had been committed in that county or place; and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in that county or place.

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

- (1) For subsection (4) of section nine of the Criminal Appeal (Scotland) Act, 1926, there shall be substituted the following subsection—
  - “(4) —
    - (a) The time during which an appellant, after admission to bail under this section, is at large pending the determination of his appeal shall not be reckoned as part of any term of imprisonment under his sentence;

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

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

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

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

- (1) Where at any sitting of the High Court of Justiciary or of the sheriff court for the trial of cases on indictment, the court is unable to proceed owing to the death or illness of the presiding judge, it shall be lawful for the clerk of court—
- (a) in the case where the diet has not been called, to convene the court and adjourn that diet and any other diet appointed for that sitting to a later sitting;
  - (b) in the case where the diet has been called but no evidence has been led, to adjourn the diet or any other diet appointed for that sitting to a later sitting; and
  - (c) where evidence has been led, to desert the diet *pro loco et tempore* and to discharge the jury ;
- and any such continuation, adjournment, desertion or other proceeding shall be entered in the record by the clerk of court.
- (2) Where a diet is deserted in pursuance of paragraph (c) of the last foregoing subsection it shall be lawful for the Lord Advocate to raise and insist in a new indictment, and in any such case where the accused is in custody it shall not be necessary that a new warrant for his incarceration be granted, and the warrant of commitment on which he is at the time in custody till liberation in due course of law shall continue in force, and in any such case where the accused is at liberty on bail his bail shall continue in force.

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

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

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

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

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

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

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

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

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

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

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

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

The power conferred by section fifty-nine of the Criminal Procedure (Scotland) Act, 1887, both as originally enacted, and as applied to summary proceedings by section five of and Schedule B to the Summary Jurisdiction (Scotland) Act, 1908, to convict a person of an offence other than that with which he is charged in an indictment or complaint shall be exercisable by the sheriff court before which such person is tried notwithstanding that that other offence was committed outside the jurisdiction of that sheriff court.

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

- (1) The following provisions shall have effect with regard to previous convictions of persons proceeded against on indictment—
  - (a) No mention shall be made in the indictment of previous convictions, nor shall extracts of previous convictions be included in the list of productions annexed to the indictment;
  - (b) If the prosecutor desires to place before the court any previous conviction as an aggravation of any charge contained in the indictment, he shall cause to be served on the accused with the indictment a notice in the form as nearly as may be of Form No. 1 of the Seventh Schedule to this Act and any conviction set forth in that notice shall be held to apply to the accused unless he gives, in accordance with the next succeeding paragraph, written intimation objecting

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to such conviction on the ground that it does not apply to him or is otherwise inadmissible;

- (c) Where the accused pleads not guilty at the first diet intimation objecting to a conviction under the last foregoing paragraph shall be given, at least five clear days before the second diet, to the Crown Agent, where the accused is cited to the High Court of Justiciary for the second diet, or to the procurator fiscal of the district to the court of which the accused is cited for the second diet where the case is to be tried in the sheriff court; and where the accused pleads guilty at the first diet, no objection to any such conviction shall be entertained unless the accused has given at least two clear days before that diet intimation to the procurator fiscal of the district to the court of which the accused is cited for that diet;
  - (d) Where notice is given by the accused under section thirty-one of the Criminal Procedure (Scotland) Act, 1887, of his intention to plead guilty and the prosecutor desires to place before the court any previous conviction as an aggravation of the charge, he shall cause to be served on the accused with the indictment a notice in the form as nearly as may be of Form No. I of the Seventh Schedule to this Act, and any conviction set forth in that notice shall be held to apply to the accused unless within two days after service of the notice he gives to the procurator fiscal written intimation objecting to such conviction on the ground that it does not apply to him or is otherwise inadmissible;
  - (e) Previous convictions shall not be laid before the presiding judge until the prosecutor moves for sentence, and in that event the prosecutor shall lay before the judge a copy of the notice referred to in paragraph (b) or paragraph (d) of this subsection;
  - (f) Where any such intimation as aforesaid is given it shall be competent to prove any previous conviction included therein in the manner set forth in section sixty-six of the Criminal Procedure (Scotland) Act, 1887, and the provisions of the said section shall apply accordingly.
- (2) Any conviction which is admitted in evidence by the court under the last foregoing subsection shall be entered in the record of the trial.
- (3) Nothing herein contained shall prevent evidence of previous convictions being led in any case where such evidence is competent in support of a substantive charge.

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

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

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

- (2) In any such proceedings as aforesaid the body corporate may, for the purpose of—

- (a) stating objections to the competency or relevancy of the indictment or proceedings; or
  - (b) tendering a plea of guilty or not guilty; or
  - (c) making a statement in mitigation of sentence;
- appear by a representative of the body corporate.
- (3) Where at the first diet in any such proceedings as aforesaid the body corporate does not appear or tender any plea in accordance with the provisions of the last foregoing subsection, or by counsel or a solicitor, it shall be deemed to have tendered a plea of not guilty.
  - (4) Where at the second diet in any such proceedings as aforesaid the body corporate does not appear in accordance with the provisions of subsection (2) of this section, or by counsel or a solicitor, the court shall, on the motion of the prosecutor, if it is satisfied that the provisions of subsection (1) of this section have been complied with, proceed to hear and dispose of the case in the absence of the body corporate.
  - (5) Where in any such proceedings as aforesaid a body corporate is sentenced to a fine, the fine may be recovered in like manner in all respects as if a copy of the sentence certified by the clerk of the court were an extract decree of the Court of Session for the payment of the amount of the fine by the body corporate to the King's and Lord Treasurer's Remembrancer.
  - (6) Nothing contained in sections twenty-eight or twenty-nine of the Criminal Procedure (Scotland) Act, 1887, shall require a plea tendered by or on behalf of a company to be signed.
  - (7) If on the application of the procurator fiscal, a sheriff is satisfied that there is reasonable ground for suspecting that an offence has been or is being committed by a body corporate, the sheriff shall have the like power to grant warrant for the citation of witnesses and the production of documents and articles as he would have if a petition charging an individual with the commission of the offence were presented to him.
  - (8) In this section, the expression "representative" in relation to a body corporate against which such proceedings as aforesaid are brought, means an officer or servant of the body corporate duly appointed by it for the purpose of those proceedings. Such appointment need not be under the seal of the body corporate, and a statement in writing purporting to be signed by the managing director of, or by any person having or being one of the persons having the management of the affairs of the body corporate, to the effect that the person named in the statement has been appointed the representative of the body corporate for the purpose of the said proceedings shall be admissible without further proof as evidence that the person has been appointed.

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

- (1) Where in any proceedings on indictment the second diet in which is to be in the sheriff court the indictment is not brought to trial at that diet and a warrant has been issued by the sheriff clerk under section twenty-three of the Criminal Procedure (Scotland) Act, 1887, for a subsequent sitting of the court on a day within one month after the date of the aforesaid second diet, it shall be lawful for the court to adjourn that diet to the subsequent sitting, and the warrant shall have effect as if the second diet had been originally fixed for the date of such subsequent sitting.

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- (2) Where a diet has been fixed for the trial of any summary complaint, and the parties desire that the complaint should be disposed of at an earlier or a later diet, the court may on a joint application in writing by the parties or their solicitors discharge the diet so fixed and fix in lieu thereof an earlier or a later diet.

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

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

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

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

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

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

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

Sections five, six and seven of the Bail (Scotland) Act, 1888 (which relate to applications for bail and to appeals against decisions in such applications) shall, with any necessary modifications, apply to an application for bail by a person charged with an offence on complaint under the Summary Jurisdiction (Scotland) Act, 1908, in like manner as those sections apply to an application for bail by a person committed until liberation in due course of law.

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

- (1) Section eighteen of and Schedule C to the Summary Jurisdiction (Scotland) Act, 1908, in so far as they require a statutory charge included in a summary complaint to specify the enactment fixing the penalty or to set forth the penalty, shall cease to have effect.
- (2) Section thirty-four of the said Act, in so far as it requires previous convictions to be set forth in a summary complaint, shall cease to have effect and no such previous conviction shall be laid before the judge in any proceedings on such complaint until



the judge is satisfied that the charge is proved, and in that event the prosecutor shall lay before the judge a copy of any notice served on the accused in accordance with subsection (3) or subsection (4) of this section.

- (3) Where a summary complaint includes any statutory charge notice in the form as nearly as may be of Form No. 2 of the Seventh Schedule to this Act shall be served on the accused with the complaint where he is cited to a diet, and, where he is in custody, the complaint and such a notice shall be served on him before he is asked to plead.
- (4) Where the accused in any summary proceedings has been previously convicted of any offence forming an aggravation of any offence libelled in the complaint a notice in the form as nearly as may be of Form No. 3 or Form No. 4 of the Seventh Schedule to this Act shall be served on the accused with the complaint where he is cited to a diet, and, where he is in custody, the complaint and such a notice shall be served on him before he is asked to plead.
- (5) A copy of any notice served on an accused under this section shall be entered in the record or minutes of the proceedings.
- (6) Nothing herein contained shall prevent evidence of previous convictions being led in any case where such evidence is competent in support of a substantive charge.

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

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

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

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

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

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

- (1) Within one month after receipt of the draft case under the last foregoing section each party shall cause to be transmitted to the judge against whose judgment the appeal is taken and to the other parties a note of any adjustments he desires to have made on the draft case or intimate that he has no such adjustments to suggest, and if the appellant fails so to do he shall be deemed to have abandoned

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

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his appeal, and in any such case the court shall have the like power to grant warrant for his apprehension and imprisonment as is conferred by section sixty-three of this Act.

- (2) Within fourteen days after receipt of any such adjustments or intimation as aforesaid the judge against whose judgment the appeal is taken shall (unless the appellant is deemed to have abandoned his appeal), after considering any such adjustments state and sign the case.

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

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