Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PROCEDURE PRIOR TO TRIAL

Arrest, Judicial Examination, Custody, Bail, Etc.

12 Petitions for Warrants.

Petitions for warrant to arrest and commit persons suspected of or charged with crime may set forth the charge in the forms set out in Schedule A to the [M1]Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form; and the provisions of sections 43 to 46 and 48 to 55 of this Act shall apply to any such petition as they apply to the indictment.

Marginal Citations

M1 1887 c. 35**(39:1).**

13 Warrants for arrest of escaped prisoners and mental patients.

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

(a) an offender unlawfully at large from a prison or other institution to which the Prison Act applies in which he is required to be detained after being convicted of an offence; or

(b) a convicted mental patient liable to be retaken under **[**[F1]section 18, 38(7) or 138 of the [M2]Mental Health Act 1983**]**, **[**[F2]section 28, 44 or 121 of the [M3]Mental Health (Scotland) Act 1984**]** or section 30 or 108 of the [M4]Mental Health Act (Northern Ireland) 1961 (retaking of mental patients who are absent without leave or have escaped from custody);

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

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

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

(3) **[**F3Section 137 of the M5Mental Health Act 1983**]**, **[**F4section 120 of the M6Mental Health (Scotland) Act 1984**]** and section 107 of the M7Mental 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 **[**F3the said Act of 1983**]**, **[**F41984**]** or1961, 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 **[**F5Part III of the M8Mental Health Act 1983**]**, **[**F6Part VI of the M9Mental Health (Scotland) Act 1984**]**, Part III of the M10Mental Health Act (Northern Ireland) 1961 or section 25, 175, 177 or 178 of this Act in pursuance of a hospital order or transfer direction together with an order or direction restricting his discharge **[**F7or a person liable to be detained under**][**F5section 38 of the said Act of 1983**]**;

"place of safety" has the same meaning as in **[**F5Part III of the said Act of 1983**]** or Part III of the said Act of 1961 or section 462 of this Act, as the case may be;

"Prison Act" means the M11Prison Act 1952, the M12Prisons (Scotland) Act 1952 or the M13Prison Act (Northern Ireland) 1953, as the case may be.

Textual Amendments

F1 Words substituted by Mental Health Act 1983 (c. 20, SIF 85), s. 148, **Sch. 4 para. 41(a)**

F2 Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), **Sch. 3 para. 23(a)**

F3 Words substituted by Mental Health Act 1983 (c. 20, SIF 85), s. 148, **Sch. 4 para. 41(b)**

F4 Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), **Sch. 3 para. 23(b)**

F5 Words substituted by Mental Health Act 1983 (c. 20, SIF 85), s. 148, **Sch. 4 para. 41(c)**

F6 Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), **Sch. 3 para. 23(c)**

F7 Words inserted by Mental Health (Amendment) Act 1982 (c. 51, SIF 85), Sch. 3 para. 50(b), **Sch. 5 para. 1**

Marginal Citations

M2 1983 c. 20**(85).**

M3 1984 c. 36**(85).**

M4 1961 c. 15 (N.I.)

M5 1983 c. 20**(85).**

M6 1984 c. 36**(85).**

M7 1961 c. 15 (N.I.)

M8 1983 c. 20**(85).**

M9 1984 c. 36**(85).**

M10 1961 c. 15 (N.I.)

M11 1952 c. 52**(39:1).**

M12 1952 c. 61**(39:1).**

M13 1953 c. 18 (N.I.)

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14 Warrant to search for or remove a child.

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

(a) that the child has been or is being assaulted, ill-treated, or neglected in any place within the jurisdiction of the justice, in a manner likely to cause him unnecessary suffering or injury to health, or

(b) that any offence mentioned in Schedule 1 to this Act has been or is being committed in respect of the child,

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

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

(a) where the **[**[F8]Principal Reporter**]** considers the child does not require compulsory measures of care, or

(b) after the day on which a children's hearing first sit to consider his case in pursuance of section 37(4) of the [M14]Social Work (Scotland) Act 1968, or

(c) for a period exceeding seven days.

[F9](3) . . . . . .

(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.

Textual Amendments

F8 Words in s. 14(2)(a) substituted (1.4.1996) by 1994 c. 39, ss. 180(1), 184(2), **Sch. 13 para. 97(8)**; S.I. 1996/323, **art. 4(1)(c)**

F9 S. 14(3) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 8, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Modifications etc. (not altering text)

C1 S. 14 amended by Adoption (Scotland) Act 1978 (c. 28, SIF 49:11), **s. 37(1)** and Foster Children (Scotland) Act 1984 (c. 56, SIF 20), **s. 13**

Marginal Citations

M14 1968 c. 49**(81:3).**

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[F10 15 Warrants granted by justice may be executed throughout Scotland.

Any warrant granted by a justice may, without being backed or endorsed by any other justice, be executed throughout Scotland in the same way as it may be executed within the jurisdiction of the justice who granted it.]

Textual Amendments

F10 S. 15 substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 9**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F11 15A Warrants for search and apprehension to be signed by judge.

Any warrant for search or apprehension granted under this Part of this Act shall be signed by the judge granting it, and execution upon any such warrant may proceed either upon the warrant itself or upon an extract of the warrant issued and signed by the clerk of court.]

Textual Amendments

F11 S. 15A inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 9**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

16 Backing of certain warrants from the Isle of Man.

(1) A warrant issued in the Isle of Man for the arrest of a person charged with an offence may, after it has been endorsed by a justice in Scotland, be executed there by the person bringing that warrant, by any person to whom the warrant was originally directed or by any officer of law of the sheriff court district where the warrant has been endorsed as aforesaid in like manner as any such warrant issued in Scotland.

(2) In this section "endorsed" means endorsed in the like manner as a process to which section 4 of the [M15]Summary Jurisdiction (Process) Act 1881 applies.

Marginal Citations

M15 1881 c. 24**(36:3)**.

17 . . . . . F12

Textual Amendments

F12 S. 17 repealed by Criminal Law Act 1977 (c. 45, SIF 39:1), **Sch. 13**

18 Power of constable to take offenders into custody.

(1) Without prejudice to any other powers of arrest, any constable may take into custody, without warrant—

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(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.

[F13(2) Where a person has been arrested under this section, the officer in charge of a police station may—

(a) liberate him upon a written undertaking, signed by him and certified by the said officer, in terms of which that person undertakes to appear at a specified court at a specified time; or

(b) liberate him without any such undertaking; or

(c) refuse to liberate him; and such refusal and the detention of that person until his case is tried in the usual form shall not subject the officer to any claim whatsoever.

(3) A person in breach of an undertaking given by him under subsection (2)(a) above without reasonable excuse shall be guilty of an offence and liable to the following penalties—

(a) a fine not exceeding **[**F14level 3 on the standard scale**]**; and

(b) imprisonment for a period not exceeding 3 months.

(4) The penalties provided for in subsection (3) above may be imposed in addition to any other penalty which it is competent for the court to impose, notwithstanding that the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.

(5) In any proceedings relating to an offence under this section, a writing, purporting to be such an undertaking as is mentioned in subsection (2)(a) above and bearing to be signed and certified, shall be sufficient evidence of the terms of the undertaking given by the arrested person.**]**

Textual Amendments

F13 S. 18(2)–(5) substituted for s. 18(2) by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **s. 7(1)**

F14 Words in s. 18(3)(a) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 10**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

19 Prisoners before examination to have access to solicitor.

(1) Where any person has been arrested on any criminal charge, such person shall be entitled immediately upon such arrest

[F15(a)**]** to have intimation sent to a solicitor that his professional assistance is required by such person, and informing him

[F16(i) of the place where the person is being detained;

(ii) whether the person is to be liberated; and

(iii) if the person is not to be liberated, the date on which he is to be taken to court and the court to which he is to be taken;**]**

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[F17(b) to be told what rights there are under paragraph (a) above and subsections (2) and (3) below.**]**

(2) Such solicitor shall be entitled to have a private interview with the person accused before he is examined on declaration, and to be present at such examination.

(3) It shall be in the power of the sheriff or justice to delay such examination for a period not exceeding 48 hours from and after the time of such person's arrest, in order to allow time for the attendance of such solicitor.

Textual Amendments

F15 Word inserted by virtue of Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 25**

F16 S. 19(1)(a)(i)-(iii) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) for words by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 11**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F17 S. 19(1)(b) inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 25**

20 Accused at examination need not emit a declaration.

(1) Where the accused is brought before the sheriff for examination on any charge and he or his solicitor intimates that he does not desire to emit a declaration in regard to such charge, it shall be unnecessary to take a declaration, and **[**F18subject to section 20A of this Act**]** the accused may be committed for further examination or until liberated in due course of law without a declaration being taken.

F19(2) . . . . . .

(3) The foregoing provisions of this section shall not prejudice the right of the accused subsequently to emit a declaration on intimating to the prosecutor his desire to do so **[**F20; and that declaration shall be taken in further examination.**]**

[F21(3A) An accused person may, where subsequent to examination (or further examination) on any charge the prosecutor desires to question him as regards an extrajudicial confession (whether or not a full admission) allegedly made by him, to or in the hearing of an officer of police, which is relevant to the charge and as regards which he has not previously been examined, be brought before the sheriff for further examination.

(3B) Where the accused is brought before the sheriff for further examination it shall be in the power of the sheriff to delay that examination for a period not exceeding 24 hours in order to allow time for the attendance of the accused's solicitor.

(3C) Any proceedings before the sheriff in examination or further examination shall be conducted in chambers and outwith the presence of any co-accused.**]**

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

Textual Amendments

F18 Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 6(1)(a), **Sch. 6 para. 1**

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F19 S. 20(2) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 12, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F20 Words added by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 6(1)(b), **Sch. 6 para. 1**

F21 S. 20(3A)–(3C) inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 6(1)(c), **Sch. 6 para. 1**

[F22 20A Accused at examination may be questioned by prosecutor.

(1) Subject to the following provisions of this section, an accused on being brought before the sheriff for examination on any charge (whether that examination is the first examination or a further examination) may be questioned by the prosecutor in so far as such questioning is directed towards eliciting any **[**F23admission,**]** denial, explanation, justification or comment which the accused may have as regards—

(a) matters averred in the charge:

Provided that the particular aims of a line of questions under this paragraph shall be to determine—

(i) whether any account which the accused can give ostensibly discloses a **[**F24defence**]**; and

(ii) the nature and particulars of that defence;

(b) the alleged making by the accused, to or in the hearing of an officer of police, of an extrajudicial confession (whether or not a full admission) relevant to the charge:

Provided that questions under this paragraph may only be put if the accused has, before the examination, received from the prosecutor or from an officer of police a written record of the confession allegedly made; or

(c) what is said in any declaration emitted in regard to the charge by the accused at the examination.

(2) The prosecutor shall, in framing questions in exercise of his power under subsection (1) above, have regard to the following principles—

(a) the questions should not be designed to challenge the truth of anything said by the accused;

(b) there should be no reiteration of a question which the accused has refused to answer at the examination; and

(c) there should be no leading questions;

and the sheriff shall ensure that all questions are fairly put to, and understood by, the accused.

(3) The accused, where he is represented by a solicitor at the judicial examination, shall be told by the sheriff that he may consult that solicitor before answering any question.

[F25(3A) The accused shall be told by the sheriff that if he answers any question put to him at the examination under this section in such a way as to disclose an ostensible defence, the prosecutor shall be under the duty imposed by subsection (7) below.**]**

(4) With the permission of the sheriff, the solicitor for the accused may ask the accused any question the purpose of which is to clarify any ambiguity in an answer given by the accused to the prosecutor at the examination or to give the accused an opportunity to answer any question which he has previously refused to answer.

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(5) An accused may decline to answer a question under subsection (1) above; and, where he is subsequently tried on the charge mentioned in that subsection or on any other charge arising out of the circumstances which gave rise to the charge so mentioned, his having so declined may be commented upon by the prosecutor, the judge presiding at the trial, or any co-accused, only where and in so far as the accused (or any witness called on his behalf) in evidence avers something which could have been stated appropriately in answer to that question.

(6) The procedure in relation to examination under this section shall be prescribed by Act of Adjournal under this Act.

[F26(7) Without prejudice to any rule of law, on the conclusion of an examination under this section the prosecutor shall secure the investigation, to such extent as is reasonably practicable, of any ostensible defence disclosed in the course of the examination.

(8) The duty imposed by subsection (7) above shall not apply as respects any ostensible defence which is not reasonably capable of being investigated.**]]**

Textual Amendments

F22 Ss. 20A, 20B inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 6(2), **Sch. 6 para. 1**

F23 Word in s. 20A(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 10(2)(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F24 Words in para. (i) to the proviso of s. 20A(1)(a) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 10(2)(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F25 S. 20A(3A) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 10(3)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F26 S. 20A(7)(8) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 10(4)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

20B Record to be made of proceedings at examination.

(1) The prosecutor shall provide for a*verbatim*record to be made by **[**F27means of shorthand notes or by mechanical means**]** of all questions to and answers and declarations by, the accused in examination, or further examination, under sections 20 and 20A of this Act.

[F28(1A) A shorthand writer shall—

(a) sign the shorthand notes taken by him of the questions, answers and declarations mentioned in subsection (1) above and certify the notes as being complete and correct; and

(b) retain the notes.

(1B) A person recording the questions, answers and declarations mentioned in subsection (1) above by mechanical means shall—

(a) certify that the record is true and complete;

(b) specify in the certificate the proceedings to which the record relates; and

(c) retain the record.

(1C) The prosecutor shall require the person who made the record mentioned in subsection (1) above, or such other competent person as he may specify, to make a transcript of the record in legible form; and that person shall—

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(a) comply with the requirement;

(b) certify the transcript as being a complete and correct transcript of the record purporting to have been made and certified, and in the case of shorthand notes signed, by the person who made the record; and

(c) send the transcript to the prosecutor.**]**

[[F29](2) A transcript certified under subsection (1C)(b) above shall, subject to subsection (4) below, be deemed for all purposes to be a complete and correct record of the questions, answers and declarations mentioned in subsection (1) above.**]**

(3) Subject to subsections (5) and (6) below, within 14 days of the date of examination or further examination, the prosecutor shall—

(a) serve a copy of the transcript on the accused examined; and

(b) serve a further such copy on the solicitor (if any) for that accused.

(4) Subject to subsections (5) and (6) below, where notwithstanding the certification mentioned in subsection (2) above the said accused or the prosecutor is of the opinion that a transcript served under paragraph (a) of subsection (3) above contains an error or is incomplete he may—

(a) within 10 days of service under the said paragraph (a), serve notice of such opinion on the prosecutor or as the case may be the said accused; and

(b) within 14 days of service under paragraph (a) of this subsection, apply to the sheriff for the error or incompleteness to berectified;

and the sheriff shall within seven days of the application hear the prosecutor and the said accused in chambers and may authorise rectification:

Provided that where—

(i) the person on whom notice is served under paragraph (a) of this subsection agrees with the opinion to which that notice relates the sheriff may dispense with such hearing;

(ii) the said accused neither attends, nor secures that he is represented at, such hearing it shall, subject to paragraph (i) above, nevertheless proceed.

(5) Where at the time of a further examination a trial diet is already fixed and the interval between the further examination and that diet is not sufficient to allow of the time limits specified in subsections (3) and (4) above, the sheriff shall (either or both)—

(a) direct that those subsections shall apply in the case with such modifications as to time limits as he shall specify;

(b) postpone the trial diet:

Provided that postponement under paragraph (b) above alone shall only be competent where the sheriff considers that to proceed under paragraph (a) above alone, or paragraphs (a) and (b) above together, would not be practicable.

(6) Any time limit mentioned in subsections (3) and (4) above (including any such time limit as modified by a direction under subsection (5) above) may be extended, in respect of the case, by the High Court.

(7) In so far as it is reasonably practicable so to arrange, the sheriff who deals with any application made under subsection (4) above shall be the sheriff before whom the examination (or further examination) to which the application relates was conducted.

(8) Any decision of the sheriff, as regards rectification under subsection (4) above, shall be final.

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(9) A copy of—

(a) a transcript required by paragraph (a) of subsection (3) above to be served on an accused or by paragraph (b) of that subsection to be served on his solicitor; or

(b) a notice required by paragraph (a) of subsection (4) above to be served on an accused or on the prosecutor,

[F30shall be served in such manner as may be prescribed by Act of Adjournal**]**; and a written execution purporting to be signed by the person who served such transcript or notice, together with, where appropriate, **[**F31the relevant post office receipt**]**shall be sufficient evidence of service of such a copy.

Textual Amendments

F27 Words in s. 20B substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(2)(a)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 4(1)(c)

F28 S. 20B(1A)-(1C) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(2)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 4(1)(c)

F29 S. 20B(2) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(2)(c)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 4(1)(c)

F30 Words in s. 20B(9) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 13(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F31 Words in s. 20B(9) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 13(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

21 Examination of accused on charges arising in different districts.

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

22 Committal until liberation in due course of law.

(1) All informations shall be signed and no person shall be committed until liberated in due course of law for any crime or offence without a warrant in writing expressing the particular charge in respect of which he is committed.

(2) Any such warrant for imprisonment which either proceeds on an unsigned information or does not express the particular charge shall be null and void.

(3) The accused person shall immediately be given a true copy of the warrant for imprisonment signed by the messenger or executor of the warrant before imprisonment or the warder of the prison receiving the warrant.

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23 Remand and committal of persons under 21.

(1) Where a court remands or commits for trial or for sentence a person under 21 years of age who is charged with or convicted of an offence and is not released on bail, then, except as otherwise expressly provided by this section, the following provisions shall have effect, that is to say—

(a) subject to the following paragraph, if he is under 16 years of age the court shall **[**F32, instead of committing him to prison, commit him to the local authority in whose area the court is situated to be detained—;

(i) where the court so requires, in secure accommodation within the meaning of the Social Work (Scotland) Act 1968; and

(ii) in any other case, in a suitable place of safety chosen by the authority;**]**

(b) if he is a person of over 16 years of age, or a child under 16 years of age but over 14 years of age who is certified by the court to be unruly or depraved, and the court has been notified by the Secretary of State that a remand centre is available for the reception from that court of persons of his class or description, he shall be committed to a remand centre instead of being committed to prison.

(2) Where any person is committed to a local authority or to a remand centre under any provision of this Act, that authority or centre shall be specified in the warrant, and he shall be detained by the authority or in the centre for the period for which he is committed or until he is liberated in due course of law.

(3) Where any person has been committed to a local authority under any provision of this Act, the court by which he was committed, if the person so committed is not less than 14 years of age and it appears to the court that he is unruly or depraved, may revoke the commitment and commit the said person—

(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, **[**F33to be detained—.

(a) where the court so requires, in secure accommodation within the meaning of the Social Work (Scotland) Act 1968; and

(b) in any other case, in a suitable place of safety chosen by the authority.**]**

Textual Amendments

F32 S. 23(1)(a)(i)(ii) and words substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) for words by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 14(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F33 S. 23(4)(a)(b) and words substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) for words by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 14(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Commencement Information

I1 S. 23 wholly in force at 6.1.1992; see s. 464(3) and S.I. 1991/2883, **art. 2**

Changes to legislation: *Criminal Procedure (Scotland) Act 1975, Procedure prior to Trial is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

24 Committal of children to custody in place of safety.

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

Provided that in the case of a child over 14 years of age it shall not be obligatory on the court so to commit him if the court certifies that he is of so unruly a character that he cannot safely be so committed or that he is of so depraved a character that he is not a fit person to be so detained **[**F34; but the court shall not so certify a child unless such conditions as the Secretary of State ma y by order made by statutory instrument prescribe are satisfied in relation to the child.**]**

(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 **[**F35; but a commitment shall not be so revoked unless conditions as the Secretary of State may by order made by statutory instrument prescribe are satisfied in relation to the child.**]**

Textual Amendments

F34 Words added (*prosp.*) by Children Act 1975 (c. 72, SIF 42:9, 10), **ss. 70(a)**, 108(2)

F35 Words added (*prosp.*) by Children Act 1975 (c. 72, SIF 42:9, 10), **ss. 70(b)**, 108(2)

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

(1) Where a court remands or commits for trial a person charged with any offence who appears to the court to be suffering from mental disorder, and the court is satisfied that a hospital is available for his admission and suitable for his detention, the court may, instead of remanding him in custody, commit him to that hospital.

(2) Where any person is committed to a hospital as aforesaid, the hospital shall be specified in the warrant and, if the responsible medical officer is satisfied that he is suffering from mental disorder of a nature or degree which warrants his admission to a hospital under **[**F36Part V of the M16Mental Health (Scotland) Act 1984**]**, he shall there be detained for the period for which he is remanded or the period of committal, unless before the expiration of that period he is liberated in due course of law.

(3) When the responsible medical officer has examined the person so detained he shall report the result of that examination to the court and, where the report is to the effect that the person is not suffering from mental disorder of such a nature or degree as aforesaid, the court may commit him to any prison or other institution to which he might have been committed had he not been committed to hospital or may otherwise deal with him according to law.

(4) No person shall be committed to a hospital under this section except on the written or oral evidence of a medical practitioner.

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[F37(5) Without prejudice to subsection (3) above, the court may review an order under subsection (1) above on the ground that there has been a change of circumstances since the order was made and, on such review—

(a) where the court considers that such an order is no longer required in relation to a person, it shall revoke the order and may deal with him in such way mentioned in subsection (3) above as the court thinks appropriate;

(b) in any other case, the court may—

(i) confirm or vary the order; or

(ii) revoke the order and deal with him in such way mentioned in subsection (3) above as the court considers appropriate.

(6) Subsections (1) to (4) above shall apply to the review of an order under subsection (5) above as they apply to the making of an order under subsection (1) above.**]**

Textual Amendments

F36 Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), **Sch. 3 para. 24**

F37 S. 25(5)(6) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 53**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Marginal Citations

M16 1984 c. 36**(85).**

26 Bail competent before committal.

(1) All crimes and offences, except murder and treason, shall be bailable.

(2) Any person accused of a crime which is by law bailable shall be entitled **[**F38, on any occasion on which he is brought before the sheriff prior to his committal until liberated in due course of law, to apply**]** to the sheriff for **[**F39bail**]**:

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

(3) The sheriff F40. . . shall be entitled in his discretion to refuse such application before the person accused is committed until liberated in due course of law.

(4) Where an accused person is admitted to bail without being committed until liberated in due course of law, it shall not be necessary so to commit him, and it shall be lawful to serve him with an indictment or complaint without his having been previously so committed.

Textual Amendments

F38 Words in s. 26(2) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 15(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F39 Word substituted by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 1 para. 3**

F40 Words in s. 26(3) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 15(b), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Changes to legislation: *Criminal Procedure (Scotland) Act 1975, Procedure prior to Trial is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

27 Renewal of application for bail after committal.

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

28 Admission or refusal of bail after committal.

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

(2) Such application shall be disposed of within 24 hours after its presentation to the sheriff, failing which the accused shall be forthwith liberated.

[F41(3) For the avoidance of doubt, the provisions of section 26 of this Act and the foregoing provisions of this section apply whether or not the person is in custody at such time as he appears for the disposal of his application.**]**

Textual Amendments

F41 S. 28(3) added by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 26**

[F42 28A No bail for persons charged with or convicted of homicide or rape after previous conviction of such offences.

(1) Notwithstanding sections 26 to 33 and 238 of this Act, a person who in any proceedings has been charged with or convicted of—

(a) attempted murder;

(b) culpable homicide;

(c) rape; or

(d) attempted rape,

in circumstances where this section applies shall not be granted bail in those proceedings.

(2) This section applies where—

(a) the person has previously been convicted by or before a court in any part of the United Kingdom of any offence specified in subsection (1) above or of murder or manslaughter; and

(b) in the case of a previous conviction of culpable homicide or of manslaughter—

(i) he was sentenced to imprisonment or, if he was then a child or young person, to detention under any of the relevant enactments;

(ii) a hospital order was imposed in respect of him;

(iii) an order having the same effect as a hospital order was made in respect of him under section 174ZC(2)(a) of this Act; or

(iv) an order having equivalent effect to an order referred to in sub-paragraph (ii) or (iii) above has been made in respect of him by a court in England and Wales.

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(3) This section applies whether or not an appeal is pending against conviction or sentence or both.

(4) In this section—

"conviction" includes—

(a) a finding that a person is not guilty by reason of insanity;

(b) a finding under section 174ZA(2) of this Act;

(c) a finding under section 4A(3) of the Criminal Procedure (Insanity) Act 1964 (cases of unfitness to plead) that a person did the act or made the omission charged against him; and

(d) a conviction of an offence for which an order is made placing the offender on probation or discharging him absolutely or conditionally;

and "convicted" shall be construed accordingly; and

"the relevant enactments" means—

(a) as respects Scotland, sections 205 and 206 of this Act;

(b) as respects England and Wales, section 53(2) of the Children and Young Persons Act 1933; and

(c) as respects Northern Ireland, section 73(2) of the Children and Young Persons Act (Northern Ireland) 1968.**]**

Textual Amendments

F42 S. 28A inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 3**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

29 . . . . . **F43**

Textual Amendments

F43 Ss. 29, 30(5), 34, 36 repealed by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 2**

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

(1) The following provisions of this section shall apply where a court has refused to admit a person to bail or, where a court has so admitted a person, the bail fixed in his case has not been found.

(2) A court shall, on the application of any such person as aforesaid, have power to review its decision to admit to bail or its decision as to the bail fixed and may, on cause shown, admit the person to bail or, as the case may be, fix bail **[**F44on different conditions**]**.

(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) **F45**

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Textual Amendments

F44 Words substituted by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 1 para. 4**

F45 Ss. 29, 30(5), 34, 36 repealed by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 2**

[F46 30A Application by prosecutor for review of court's decision to grant bail.

(1) On an application by the prosecutor at any time after a court has granted bail to a person the court may, where the prosecutor puts before the court material information which was not available to it when it granted bail to that person, review its decision.

(2) On receipt of an application under subsection (1) above the court shall—

(a) intimate the application to the person granted bail;

(b) fix a diet for hearing the application and cite that person to attend the diet; and

(c) where it considers that the interests of justice so require, grant warrant to arrest that person.

(3) On hearing an application under subsection (1) above the court may—

(a) withdraw the grant of bail and remand the person in question in custody; or

(b) grant bail, or continue the grant of bail, either on the same or on different conditions.

(4) Nothing in the foregoing provisions of this section shall affect any right of appeal against the decision of a court in relation to bail.]

Textual Amendments

F46 S. 30A inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 4**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

31 Appeal in respect of bail.

(1) Where an application for bail after commitment until liberation in due course of law is refused by any sheriff, or where the applicant is dissatisfied with the amount of bail fixed, he may appeal to the High Court, and the High Court may, in its discretion, order intimation to the Lord Advocate.

(2) Where an application for bail is granted by any sheriff, whether before or after commitment until liberation in due course of law, the public prosecutor, if dissatisfied with the decision allowing bail, or with the amount of bail fixed, may appeal to the High Court, and the applicant shall not be liberated until the appeal by the prosecutor is disposed of, except as provided in section 33 of this Act.

(3) Written notice of appeal shall be immediately given to the opposite party by the party appealing under this section.

(4) An appeal under this section shall be disposed of by the High Court or any Lord Commissioner of Justiciary in court or in chambers after such inquiry and hearing of parties as shall seem just.

[F47(4A) Where an applicant in an appeal under this section is under 21 years of age, section 23 of this Act shall apply to the High Court or, as the case may be, the Lord Commissioner

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of Justiciary when disposing of the appeal as it applies to a court when remanding or committing a person of the applicant's age for trial or sentence.**]**

(5) In the event of the appeal of the public prosecutor under this section being refused, the court may award expenses against him.

Textual Amendments

F47 S. 31(4A) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 16**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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

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

33 Liberation of applicant when appeal by public prosecutor.

(1) When an appeal is taken by the public prosecutor either against the grant of bail or against the amount fixed, the applicant to whom bail has been granted shall, if the bail fixed shall have been found by him, be liberated after 72 hours [F48]. . . from the granting of the application, whether the appeal be disposed of or not, unless the High Court shall grant an order for his further detention in custody. In computing the aforesaid periods, Sundays and public holidays, whether general or court holidays, shall be excluded.

(2) Notice [F49]. . . to the governor of the prison of the issue of such an order within the time aforesaid bearing to be sent by the Clerk of Justiciary or the Crown Agent shall be sufficient warrant for the detention of the applicant pending arrival of the order in due course of post.

Textual Amendments

F48 Words in s. 33(1) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 17(a), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F49 Words in s. 33(2) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 17(b), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

34 . . . . . [F50]

Textual Amendments

F50 Ss. 29, 30(5), 34, 36 repealed by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 2**

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

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

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36 . . . . . F51

Textual Amendments

F51 Ss. 29, 30(5), 34, 36 repealed by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 2**

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

(1) Where a child has been charged with any offence, the court may order his parent or guardian to give security for his co-operation in securing the child's good behaviour.

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

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

38 Separation of children from adults at courts, etc.

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

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

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

(2) Where the child is arrested, the constable by whom he is arrested or the officer of police in charge of the police station to which he is brought shall cause the parent or guardian of the child, if he can be found, to be warned to attend at the court before which the child will appear.

(3) For the purpose of enforcing the attendance of a parent or guardian and enabling him to take part in the proceedings and enabling orders to be made against him, rules may be made under section 457 of this Act, for applying, with the necessary adaptations and modifications, such of the provisions of Part II of this Act as appear appropriate for the purpose.

(4) The parent or guardian whose attendance shall be required under this section shall be the parent or guardian having the actual possession and control of the child:

Provided that, if that person is not the father, the attendance of the father may also be required.

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(5) The attendance of the parent of a child shall not be required under this section in any case where the child was before the institution of the proceedings removed from the custody or charge of his parent by an order of a court.

40 Notice to local authority of charge against a child.

(1) Where a child is to be brought before a court, notification of the day and hour when, and the nature of the charge on which, the child is to be so brought shall be sent by the chief constable of the area in which the offence is alleged to have been committed to the local authority for the area in which the court will sit.

(2) Where a local authority have received a notification under the foregoing subsection they shall make such investigations and render to the court a report which shall contain such information as to the home surroundings of the child as appear to them will assist the court in the disposal of his case, and the report shall contain information, which the appropriate education authority shall have a duty to supply, as to the school record, health and character of the child.

The Indictment

41 Indictment forms.

All prosecutions for the public interest before the High Court or before the sheriff sitting with a jury shall proceed on indictment in name of Her Majesty's Advocate, and such indictment may be in the forms set out in Schedule A to the [M17]Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form and shall be signed by the Lord Advocate or one of his deputes, or by a procurator fiscal, and the words "By Authority of Her Majesty's Advocate" shall be prefixed to the signature of such procurator fiscal.

Marginal Citations
M17 1887 c. 35**(39:1).**

[F52 42 Resignation, death or demission of office of Lord Advocate.

(1) All indictments which have been raised by a Lord Advocate shall remain effective notwithstanding his subsequently having died or demitted office and may be taken up and proceeded with by his successor.

(2) During any period when the office of Lord Advocate is vacant it shall be lawful to indict accused persons in the name of the Solicitor General then in office.

(3) The advocates depute shall not demit office when a Lord Advocate dies or demits office but shall continue in office until their successors receive commissions.

(4) The advocates depute and procurators fiscal shall have power, notwithstanding any vacancy in the office of Lord Advocate, to take up and proceed with any indictment which—

(a) by virtue of subsection (1) above, remains effective; or

(b) by virtue of subsection (2) above, is in the name of the Solicitor General.

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(5) For the purposes of this Act, where, but for this subsection, demission of office by one Law Officer would result in the offices of both being vacant, he or, where both demit office on the same day, the person demitting the office of Lord Advocate shall be deemed to continue in office until the warrant of appointment of the person succeeding to the office of Lord Advocate is granted.

(6) The Lord Advocate shall enter upon the duties of his office immediately upon the grant of his warrant of appointment; and he shall as soon as is practicable thereafter take the oaths of office before any Secretary of State or any Lord Commissioner of Justiciary.**]**

Textual Amendments

F52 S. 42 substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 18**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

43 Naming of accused.

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

44 Nomen juris unnecessary.

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

45 Case of two or more persons charged.

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

46 "Guilty, actor or art and part" unnecessary.

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

47 "All which or part" implied.

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

48 Qualifying words to be implied.

It shall not be necessary in any indictment to allege that any act of commission or omission therein charged was done or omitted to be done "wilfully" or "maliciously,"

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or "wickedly and feloniously," or "falsely and fraudulently," or "knowingly," or "culpably and recklessly," or "negligently," or in "breach of duty," or to use such words as "knowing the same to be forged," or "having good reason to know," or "well knowing the same to have been stolen," or to use any similar words or expressions qualifying any act charged, but such qualifying allegation shall be implied in every case.

[F53 48A Common law and statutory offences in same indictment.

It shall be competent to include in one indictment both common law and statutory charges.**]**

Textual Amendments

F53 Ss. 48A, 48B inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 19**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F54 48B Description of offence in words of statute or order.

In an indictment the description of any offence in the words of the statute or order contravened, or in similar words, shall be sufficient.**]**

Textual Amendments

F54 Ss. 48A, 48B inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 19**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

49 Quotation of statutes unnecessary.

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

50 Latitude as to time and place.

(1) The latitude formerly in use to be taken in stating time in indictments at the instance of Her Majesty's Advocate shall be implied in all statements of time where an exact time is not of the essence of the charge.

(2) The latitude formerly in use to be taken in stating any place in such indictments by adding to the word "at", or to the word "in", the words "or near", or the words "or in the near neighbourhood thereof" or similar words, shall be implied in all statements of place where the actual place is not of the essence of the charge.

(3) Where the circumstances of the offence charged make it necessary to take an exceptional latitude in regard to time or place it shall not be necessary to set forth such circumstances in the indictment, or to set forth that the particular time or the particular place is to the prosecutor unknown:

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

[F55(4) Notwithstanding subsection (3) above, nothing in any rule of law shall prohibit the amendment of an indictment to include a time outwith the exceptional latitude if it appears to the court that the amendment would not prejudice the accused.**]**

Textual Amendments

F55 S. 50(4) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 20**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

51 Latitude as to quantities, persons, things or modes.

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

52 Description of buildings, goods, money or other property.

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

53 Description of persons, goods, etc.

Where in an indictment or any list or inventory relative thereto any person is referred to, it shall be sufficient to describe him by his name and ordinary address, and it shall not be necessary to describe him as "now or lately" residing at such address, but such words shall be implied, and where goods, articles or things require to be described, it shall be sufficient to describe them in general terms without specifying the materials of which they are made, or any particulars which distinguish them from other goods, articles or things of a similar kind except in cases in which such particulars are essential to the constitution of the crime charged.

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

The word "money" when used in an indictment shall include **[**F56cheques, banknotes, postal orders, money orders and foreign currency**]**.

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Textual Amendments

F56 Words in s. 54 substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 21**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

55 Setting forth documents unnecessary.

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

56 Declarations, etc., not averred.

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

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

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

58 Authentication of alterations to indictment, etc.

(1) Any deletion or correction made before service on the principal record or service copy of an indictment shall be sufficiently authenticated by the initials of any person who has signed, or could by law have signed, the same.

(2) Any deletion or correction made on a service copy of an indictment, or on any notice of citation, postponement, adjournment or other notice required to be served on a person accused **[**[F57]shall be sufficiently authenticated by the initials of any procurator fiscal or of the person serving the same..

(3) Any deletion or correction made**]**

Textual Amendments

F57 S. 58(3) and words in s. 58(2) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) for words by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 22**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

59 Reset.

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

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

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

(1) Under an indictment for robbery, or for theft, or for breach of trust and embezzlement, or for falsehood fraud and wilful imposition, a person accused may be convicted of reset.

(2) Under an indictment for robbery, or for breach of trust and embezzlement, or for falsehood fraud and wilful imposition, a person accused may be convicted of theft.

(3) Under an indictment for theft, a person accused may be convicted of breach of trust and embezzlement, or of falsehood fraud and wilful imposition, or may be convicted of theft, although the circumstances proved may in law amount to robbery.

(4) The power conferred by this section to convict a person of an offence other than that with which he is charged in an indictment shall be exercisable by the sheriff court before which such person is tried notwithstanding that that other offence was committed outside the jurisdiction of that sheriff court.

[F58 60A Proceedings under the Merchant Shipping Acts.

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 indictment shall, in the absence of evidence to the contrary, be presumed.**]**

Textual Amendments

F58 S. 60A inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 23**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

61 Procedure where more than one crime charged.

(1) Where in an indictment two or more crimes or acts of crime are charged cumulatively, it shall be lawful to convict of any one or more of them.

(2) Any part of what is charged in an indictment, constituting in itself an indictable crime, shall be deemed separable to the effect of making it lawful to convict of such crime.

(3) Where any crime is charged in an indictment as having been committed with a particular intent or with particular circumstances of aggravation, it shall be lawful to convict of the crime without such intent or aggravation.

F59 62 . . . . . .

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Textual Amendments

F59 S. 62 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 24, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

63 Attempt at crime.

(1) Attempt to commit any indictable crime shall itself be an indictable crime, and under an indictment which charges a completed crime, the accused may be lawfully convicted of an attempt to commit such crime; and under an indictment charging an attempt, the accused may be convicted of such attempt although the evidence be sufficient to prove the completion of the crime said to have been attempted.

(2) Under an indictment which charges a crime which imports personal injury inflicted by the accused, resulting in death or serious injury to the person, the accused may be lawfully convicted of the assault or other injurious act, and may also be lawfully convicted of the aggravation that such assault or other injurious act was committed with intent to commit such crime.

64 Statutory offences which are offences at common law.

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

65 Superfluous particulars as to identity.

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

66 Proof of exceptions, qualifications, etc.

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

67 Offence committed in special capacity.

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

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Notice of previous convictions

68 Notice of previous convictions.

(1) No mention shall be made in the indictment of previous convictions, nor shall extracts of previous convictions be included in the list of productions annexed to the indictment.

(2) If the prosecutor desires to place before the court any previous conviction, he shall cause to be served on the accused along with the indictment a notice in the form [F60]. . .set out in an Act of Adjournal under this Act or as nearly as may be in such form, and any conviction set forth in that notice shall be held to apply to the accused unless he gives, in accordance with subsection (3) of this section, written intimation objecting to such conviction on the ground that it does not apply to him or is otherwise inadmissible.

(3) . . . [F61], intimation objecting to a conviction under subsection (2) of this section shall be given, at least five clear days before the **[**[F62]trial diet**]**, to the Crown Agent, where the accused is cited to the High Court for the **[**[F62]trial diet**]**, or to the procurator fiscal of the district to the court of which the accused is cited for the **[**[F62]trial diet**]** where the case is to be tried in the sheriff court; and where the accused pleads guilty at **[**[F63]any diet**]**, no objection to any such conviction shall be entertained unless the accused has, at least two clear days before that diet, given intimation to the procurator fiscal of the district to the court of which the accused is cited for that diet.

(4) Where notice is given by the accused under section 102 of this Act of his intention to plead guilty and the prosecutor desires to place before the court any previous conviction, he shall cause to be served on the accused along with the indictment a notice in the form [F60]. . . set out in an Act of Adjournal under this Act or as nearly as may be in such form, and any conviction set forth in that notice shall be held to apply to the accused unless within two days after service of the notice he gives to the procurator fiscal written intimation objecting to such conviction on the ground that it does not apply to him or is otherwise inadmissible.

Textual Amendments

F60 Words in s. 68(2)(4) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 8, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F61 Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 8**

F62 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 1(b), **Sch. 6 para. 1**

F63 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 1(c), **Sch. 6 para. 1**

Citation of Accused, Witnesses and Jurors

69 Warrants for citation.

[[F64](1)**]**When any sitting of the sheriff court or of the High Court has been appointed to be held for the trial of persons accused on indictment, the sheriff clerk of the district in which the **[**[F65]trial diet**]** is to be called, where such trials are to take place

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in the sheriff court, or the Clerk of Justiciary, where such trials are to take place in the High Court, shall issue a warrant to officers of law to cite persons accused, witnesses, and jurors, **[**F66in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form**]**; and the execution of the citation against such accused persons **[**F67witnesses or jurors**]**shall be **[**F66in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form**]**; F68. . .; and such warrant authenticated by the signature of such clerk, or a duly certified copy thereof, shall be a sufficient warrant to all officers competent.

F69F68 . . . . . .

[F70(2) A witness may be cited by sending the citation to the witness by ordinary or registered post or by the recorded delivery service and a written execution in the form prescribed by Act of Adjournal or as nearly as may be in such form, purporting to be signed by the person who served such citation together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such citation.**]**

Textual Amendments

F64 S. 69 renumbered as s.69(1) (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 26(a)**; S.I 1996/517, arts. 3(2), 4-6, Sch. 2

F65 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 2, **Sch. 6 para. 1**

F66 Words substituted by S.I. 1988/110, **rule 10(2)(a)**

F67 Words in S. 69(1), as so renumbered, inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 26(b)(i)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F68 Words in s. 69(1), as so renumbered, repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I) by 1995 c. 20, s. 117, Sch. 6 Pt.I para. 26(b)(ii)(iii), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F69 Words repealed by S.I. 1981/1766, **para. 2(3)(b)** and by S.I. 1988/110, **rule 10(2)(b)**

F70 S. 69(2) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 26(c)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Modifications etc. (not altering text)

C2 "that Act" means Criminal Procedure (Scotland) Act 1887 (c. 35, SIF 39:1)

70 Service of indictment and list of witnesses.

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

71 Manner of service of indictment, etc.

Service of indictment, list of witnesses and list of productions appended thereto, and all notices or intimations to the accused, and all citations of witnesses, whether for precognition or trial, may be made or given by any **[**F71officer of law**]**.

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Textual Amendments

F71 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 27**

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

[F72(1)**]**It shall be sufficient for the citation of any juror or witness that such citation be given by any officer of law duly authorised, without witnesses; and the oath of such officer in support of the execution shall **[**F73, subject to subsection (2) below,**]** be held and received as sufficient evidence of such citation when the same shall be questioned in a court of law.

[F74(2) A court shall not issue a warrant to apprehend a witness who fails to appear at a diet to which he has been duly cited unless the court is satisfied that the witness received the citation or that its contents came to his knowledge.**]**

Textual Amendments

F72 S. 72 renumbered as s. 72(1) (31.3.1996 subject to transitional provisions in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 27(a)**; S.I 1996/517, arts. 3(2), 4-6, Sch. 2

F73 Words in S. 72(1), as so renumbered, inserted (31.3.1996 subject to transitional provisions in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 27(b)**; S.I 1996/517, arts. 3(2), 4-6, Sch. 2

F74 S. 72(2) inserted (31.3.1996 subject to transitional provisions in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 27(c)**; S.I 1996/517, arts. 3(2), 4-6, Sch. 2

73 Execution of citation of indictment.

(1) It shall be no objection to the service of an indictment, or to the citation of any juror or witness, that the officer who discharged the duty was not at the time in possession of the warrant of citation; and it shall not be necessary to produce the execution of citation of any indictment F75. . .

(2) It shall be no objection to the admissibility of the officer or witness who served such indictment to give evidence respecting such service that his name is not included in the list of witnesses served on the accused.

Textual Amendments

F75 Words in s. 73(1) repealed (31.3.1996 subject to transitional provisions in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 28**; S.I 1996/517, arts. 3(2), 4-6, Sch. 2

74 Proceedings against bodies corporate.

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

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Kingdom, at the principal place of business in the United Kingdom of the body corporate.

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

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

(a) stating objections to the competency or relevancy of the indictment or proceedings; or

(b) tendering a plea of guilty or not guilty; or

(c) making a statement in mitigation of sentence;

appear by a representative of the body corporate.

(3) F76

(4) Where at the **[**F77trial diet**]** in any such proceedings as aforesaid the body corporate does not appear in accordance with the provisions of subsection (2) of this section, or by counsel or a solicitor, the court shall, on the motion of the prosecutor, if it is satisfied that the provisions of subsection (1) of this section have been complied with, proceed to hear and dispose of the case in the absence of the body corporate.

(5) Where in any such proceedings as aforesaid a body corporate is sentenced to a fine, the fine may be recovered in like manner in all respects as if a copy of the sentence certified by the clerk of the court were an extract decree of the Court of Session for the payment of the amount of the fine by the body corporate to the Queen's and Lord Treasurer's Remembrancer.

(6) Nothing contained in section 103 or 105 of this Act shall require a plea tendered by or on behalf of a company to be signed.

(7) If on the application of the procurator fiscal, a sheriff is satisfied that there is reasonable ground for suspecting that an offence has been or is being committed by a body corporate, the sheriff shall have the like power to grant warrant for the citation of witnesses and the production of documents and articles as he would have if a petition charging an individual with the commission of the offence were presented to him.

(8) In this section, the expression "representative", in relation to a body corporate against which such proceedings as aforesaid are brought, means an officer or servant of the body corporate duly appointed by it for the purpose of those proceedings. Such appointment need not be under the seal of the body corporate, and a statement in writing purporting to be signed by the managing director of, or by any person having or being one of the persons having the management of the affairs of the body corporate, to the effect that the person named in the statement has been appointed the representative of the body corporate for the purpose of the said proceedings shall be admissible without further proof as evidence that the person has been appointed.

Textual Amendments

F76 Ss. 74(3), 105–107, 120–122 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, 8, **Sch. 8**

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F77 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 3(b), **Sch. 6 para. 1**

Modifications etc. (not altering text)

C3 S. 74 extended by Companies Act 1985 (c. 6, SIF 27), **s. 734(4)**; modified by Insurance Companies Act 1982 (c. 50, SIF 67), **s. 92(4)**

C4 S. 74 extended by Financial Services Act 1986 (c. 60, SIF 69), **s. 203(4)**, and by Banking Act 1987 (c. 22, SIF 10), **s. 98(4)**

C5 S. 74 applied by Companies Act 1989 (c. 40, SIF 27), **ss. 44(4)**, 91(4) (the application being in force as regards s. 91(4) and as regards s. 44(4) being in force for certain purposes only as mentioned in S.I. 1990/142, **Sch.** and being otherwise*prosp.*)

Fixing the Diets

[F78 75 Notice of trial diet.

Except where the indictment is served under section 102(1) of this Act, the notice served on the accused with the indictment shall call upon him to appear and answer to such indictment at

[F79(a) where the case is to be tried in the sheriff court, a first diet not less than 15 clear days after the service of the indictment and not less than 10 clear days before the trial diet; and

(b)**]** a trial diet (either in the High Court or in the sheriff court) not less than 29 clear days after the service of such indictment and notice.**]**

Textual Amendments

F78 S. 75 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 4, **Sch. 6 para. 1**

F79 S. 75(a) and the word (b) inserted (31.3.1996 subject to transitional provisions in the commencing S.I.) by 1995 c. 20, **s. 13(1)**; S.I. 1996/517, **arts. 3(2)**, 4-6 Sch. 2

[F80 75A First diet.

(1) At a first diet the court shall, so far as is reasonably practicable, ascertain whether the case is likely to proceed to trial on the date assigned as the trial diet and, in particular—

(a) the state of preparation of the prosecutor and of the accused with respect to their cases; and

(b) the extent to which the prosecutor and the accused have complied with the duty under section 84A(1) of this Act.

(2) In addition to the matters mentioned in subsection (1) above the court shall, at a first diet, consider any matter mentioned in subsection (3) below of which a party has, not less than two clear days before the first diet, given notice to the court and to the other parties.

(3) The matters referred to in subsection (2) above are—

(a) that the party intends to raise a matter relating to the competency or relevancy of the indictment or to raise an objection such as is mentioned in section 108(1) of this Act;

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(b) that he intends to submit a plea in bar of trial or to apply for separation or conjunction of charges or trials or to raise a preliminary objection under section 67 of this Act or to make an application under section 151(2) of this Act;

(c) that there are documents the truth of the contents of which ought in his view to be admitted, or that there is any other matter which in his view ought to be agreed; and

(d) that there is some other matter which could in his opinion be resolved with advantage before the trial.

(4) At a first diet the court may ask the prosecutor and the accused any question in connection with any matter which it is required to ascertain or consider under subsection (1) or (2) above.

(5) The accused shall attend a first diet of which he has been given notice and the court may, if he fails to do so, grant a warrant to apprehend him.

(6) A first diet may proceed notwithstanding the absence of the accused.

(7) The accused shall, at the first diet, be required to state how he pleads to the indictment, and section 103 of this Act shall apply where he tenders a plea of guilty.

(8) Where at a first diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—

(a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and

(b) may fix a further first diet.

(9) Subject to subsection (8) above, the court may, if it considers it appropriate to do so, adjourn a first diet.

(10) In this section "the court" means the sheriff court.**]**

Textual Amendments

F80 S. 75A inserted (31.3.1996 subject to transitional provisions in the commencing S.I.) by 1995 c. 20, **s. 13(2)**; S.I. 1996/517, **arts. 3(2)** 4-6, Sch. 2

[F81**76 Preliminary diet.**

(1) Subject to section 20B(2) of this Act and to subsections (4) and (5) below, where a party **[**F82to a case which is to be tried in the High Court**]**within the appropriate period gives written notice to the **[**F83High Court**]** and to the other parties—

(a) that he intends to raise a matter relating to the competency or relevancy of the indictment or to raise an objection such as is mentioned in section 108(1) of this Act, the court shall order that there be a diet before the trial diet;

(b) that he intends to submit a plea in bar of trial or to apply for separation or conjunction of charges or trials **[**F84or to raise a preliminary objection under section 67 of this Act**]** or to make an application under section 151(2) of this Act, the court may make such order as is mentioned in paragraph (a) above;

[F85(bb) that there are documents the truth of the contents of which ought in his view to be admitted, or that there is any other matter which in his view ought to

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be agreed, the court may make such order as is mentioned in paragraph (a) above;**]**

(c) that there is some point, as regards any matter not mentioned in paragraph (a) **[**F86, (b) or (bb)**]** above, which could in his opinion be resolved with advantage before the trial and that he therefore applies for a diet to be held before the trial diet, the court may make such order as is mentioned in paragraph (a) above.

A party giving notice under this subsection shall specify in the notice the matter (or, as the case may be, the grounds of submission or the point) to which the notice relates.

(2) A diet ordered under subsection (1) above is in this Act referred to as a "preliminary diet".

(3) The fact that a preliminary diet has been ordered on a particular notice under subsection (1) above shall not preclude the court's consideration at that diet of any other such notice as is mentioned in that subsection, which has been intimated to the court and to the other parties at least 24 hours before that diet.

(4) Subject to subsection (5) below, the cou.rt may on ordering a preliminary diet postpone the trial diet for a period not exceeding 21 days; and any such postponement (including postponement for a period which by virtue of the said subsection (5) exceeds 21 days) shall not count towards any time limit applying in respect of the case.

(5) Any period mentioned in subsection (4) above may be extended by the High Court in respect of the case.

(6) Where a preliminary diet is ordered the accused (or all the accused as the case may be) shall attend it; and he (or they as the case may be) shall be required at the conclusion thereof to state how he pleads (or they plead) to the indictment:

Provided that if the court so permits the diet may proceed notwithstanding the absence of an accused.

[F87(6A) At a preliminary diet the court shall, in addition to disposing of any matter specified in a notice given under subsection (1) above or referred to in subsection (3) above, ascertain, so far as is reasonably practicable, whether the case is likely to proceed to trial on the date assigned as the trial diet and, in particular—

(a) the state of preparation of the prosecutor and of the accused with respect to their cases; and

(b) the extent to which the prosecutor and the accused have complied with the duty under section 84A(1) of this Act.

(6B) At a preliminary diet the court may ask the prosecutor and the accused any question in connection with any matter specified in a notice under subsection (1) above or referred to in subsection (3) above or which it is required to ascertain under subsection (6A) above.

(6C) Where at a preliminary diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—

(a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and

(b) may fix a further preliminary diet.

(6D) Subject to subsection (6C) above, the court may, if it considers it appropriate to do so, adjourn a preliminary diet.**]**

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(7) In subsection (1) above, "appropriate period" means as regards notice—

(a) under paragraph (a) of that subsection, the period of 15 clear days after service of the indictment;

(b) under paragraph (b) of that subsection, the period from service of the indictment to 10 clear days before the trial diet; and

(c) under paragraph **[**F88(bb) or**]**(c) of that subsection, the period from service of the indictment to the trial diet.**]**

Textual Amendments

F81 Ss. 76, 76A substituted for s. 76 by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 5, **Sch. 6 para. 1**

F82 Words in S. 76(1) inserted (31.3.1996 subject to transitional provisions in the commencing S.I.) by 1995 c. 20, **s. 13(3)(a)(i)**; S.I 1996/517, art. 3(2), 4-6, Sch. 2

F83 Words in S. 76(1) substituted (31.3.1996 subject to transitional provisions in the commencing S.I.) by 1995 c. 20, **s. 13(3)(a)(ii)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F84 Words in s. 76(1)(b) inserted (18.9.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(3)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(3), 4(1)(c), **Sch. 2**

F85 S. 76(1)(bb) inserted (18.9.1993) by 1993 c. 9, **s. 39(2)(a)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), **Sch. 2**

F86 Words in s. 76(1)(c) substituted (18.9.1993) by 1993 c. 9, **s. 39(2)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), **Sch. 2**

F87 S. 76(6A)-(6D) inserted (31.3.1996 subject to transitional provisions in the commencing S.I.) by 1995 c. 20, **s. 13(3)(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F88 Words in s. 76(7)(c) inserted (18.9.1993) by 1993 c. 9, **s. 39(3)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), **Sch. 2**

76A Appeal in connection with preliminary diet.

(1) Without prejudice to any right of appeal under section 228 or 280A of this Act, a party may, with the leave of the court of first instance (granted either on the motion of that party or ex proprio motu) and in accordance with such procedure as may be prescribed by Act of Adjournal under this Act, appeal to the High Court against a decision at a **[**F89first diet or a preliminary diet, other than a decision to adjourn the diet or to postpone the trial diet**]**; but any such appeal must be taken not later than 2 days after such decision.

(2) Where an appeal is taken under subsection (1) above, the High Court may postpone the trial diet for such period as appears to them to be appropriate and may, if they think fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.

(3) In disposing of an appeal under subsection (1) above the High Court may affirm the decision of the court of first instance or may remit the case to it with such directions in the matter as they think fit; and where the court of first instance has dismissed the indictment or any part of it, may reverse that decision and direct that the court of first instance fix a trial diet (if it has not already fixed one as regards so much of the indictment as it has not dismissed).

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Textual Amendments

F89 Words in S. 76A(1) substituted (31.3.1996 subject to transitional provisions in the commencing S.I.) by 1995 c. 20, **s. 13(4)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F90 77 Alteration of trial diet.

Where an indictment is not brought to trial at the trial diet and a warrant for a subsequent sitting of the court, on a day within **[**F91 two months**]** after the date of the aforesaid trial diet has been issued under section 69 of this Act by the clerk of court it shall be lawful for the court to adjourn the trial diet to the subsequent sitting; and the warrant shall have effect as if the trial diet had originally been fixed for the date of the subsequent sitting.**]**

Textual Amendments

F90 S. 77 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 6, **Sch. 6 para. 1**

F91 S. 77: Words "two months" substituted (31.3.1996 subject to transitional provisions in the commencing S.I.) for paragraphs (a) and (b) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 29**; S.I 1996/517, arts. 3(2), 4-6, Sch. 2

[F92 77A Application for postponement of trial diet.

(1) At any time before the trial diet, a party may apply to the court before which the trial is to take place for postponement of the trial diet.

(2) Subject to subsection (3) below, after hearing all the parties, the court may discharge the trial diet and either fix a new trial diet or give leave to the prosecutor to serve a notice fixing a new trial diet.

(3) Where all the parties join in an application to postpone the trial diet, the court may proceed under subsection (2) above without hearing the parties.

(4) Where there is a hearing under this section the accused (or all the accused as the case may be) shall attend it;

Provided that if the court so permits the hearing may proceed notwithstanding his (or their) absence.**]**

Textual Amendments

F92 S. 77A inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 7, **Sch. 6 para. 1**

Modifications etc. (not altering text)

C6 S. 77A(2) excluded by S.I. 1988/110, **rule 45(3)**

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

[F93 78 Record copy of indictment and list of witnesses.

(1) Except in a case to which section 102 of this Act applies, the **[**F94prosecutor shall on or before the date of service of the indictment lodge the record copy of the indictment with the clerk of court before which the trial is to take place, together with a copy of the list of witnesses and a copy of the list of productions.**]**

(2) The list of productions shall include the record, made under section 20B of this Act (with any rectification, authorised under subsection (4) of that section, incorporated), of proceedings at the examination of the accused.**]**

Textual Amendments

F93 S. 78 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 8, **Sch. 6 para. 1**

F94 Words in s. 78(1) substituted (31.3.1996 subject to transitional provisions in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 30**; S.I 1996/517, arts. 3(2), 4-6, Sch. 2

79 Description of witnesses.

(1) The list of witnesses shall consist of the names of the witnesses, **[**F95together with an address at which they can be contacted for the purposes of precognition.**]**

(2) It shall not be necessary to insert in the list of witnesses the names of any witnesses to the declaration of the accused or the names of any witnesses to prove that an extract conviction applies to the accused, but witnesses may be examined in regard to these matters without previous notice.

Textual Amendments

F95 Words in s. 79(1) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 31**; S.I 1996/517, arts. 3(2), 4-6, Sch. 2

[F96 80 Objection to witness.

(1) Any objection in respect of misnomer or misdescription of—

(a) any person named in the indictment; or

(b) any witness in the list of witnesses,

shall be intimated in writing to the court before which the trial is to take place, to the prosecutor and to any other accused **[**F97, where the case is to be tried in the sheriff court, at or before the first diet and, where the case is to be tried in the High Court,**]** not less than 10 clear days before the trial diet; and, except on cause shown, no such objection shall be admitted at the trial diet unless so intimated.

(2) Where such intimation has been given or cause is shown and the court is satisfied that the accused making the objection has not been supplied with sufficient information to enable him to identify the person named in the indictment or to find such witness in sufficient time to precognose him before the trial, the court may grant such remedy by postponement, adjournment or otherwise as appears to it to be appropriate.**]**

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Textual Amendments

F96 S. 80 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 9, **Sch. 6 para. 1**

F97 Words in s. 80(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 32**; S.I 1996/517, arts. 3(2), 4-6, Sch. 2

F98 81 Examination by prosecutor of witnesses, etc., not included in lists lodged.

[F99Without prejudice to section 82A of this Act**]** In any trial it shall be competent with the leave of the court for the prosecutor to examine any witness or to put in evidence any production not included in the lists lodged by him, provided that written notice containing, in the case of a witness, his name and address **[**F100as mentioned in section 79(1) above,**]** shall have been given to the accused not less than two clear days before the day on which the jury is sworn to try the case.

Textual Amendments

F98 S. 81 excluded (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995, c. 20, ss. 17(9), 20(5); S.I 1996/517, arts. 3(2), 4-6, Sch. 2

F99 Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 28**

F100 Words in s. 81 inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 33**; S.I 1996/517, arts. 3(2), 4-6, Sch. 2

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

[F101(1) It shall not be competent for an accused to state a special defence or to lead evidence calculated to exculpate the accused by incriminating a co-accused unless—

(a) a plea of special defence, or as the case may be, notice of intention to lead such evidence, has been lodged **[**F102, where the case is to be tried in the sheriff court, at or before the first diet and, where the case is to be tried in the High Court,**]** not less than 10 clear days before the trial diet; or

[F103(b) the court, on cause shown, otherwise directs.**]]**

[F104(1A) Subsection (1) above shall apply to a defence of automatism or coercion as if it were a special defence.**]**

(2) It shall not be competent for the accused to examine any witnesses or to put in evidence any productions not included in the lists lodged by the prosecutor, unless—.

[F105(a) written notice of the names and addresses of such witnesses and of such productions shall have been given—

(i) where the case is to be tried in the sheriff court, to the procurator fiscal of the district of the trial diet at or before the first diet; and

(ii) where the case is to be tried in the High Court, to the Crown Agent at least ten clear days before the day on which the jury is sworn; or

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(b) the court, on cause shown, otherwise directs, in which case it**]** shall give such remedy to the prosecutor by adjournment or postponement of the trial or otherwise as shall seem just.

(3) A copy of every written notice required by the last foregoing subsection shall be lodged by the accused with the sheriff clerk of the district in which the **[**F106trial diet**]** is to be held, or in any case the **[**F106trial diet**]** of which is to be held in the High Court in Edinburgh with the Clerk of Justiciary, at or before the **[**F106trial diet**]**, for the use of the court.

Textual Amendments

F101 S. 82(1) substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 13, **Sch. 6 para. 1**

F102 Words in s. 82(1)(a) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 34(a)(i)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F103 S. 82(1)(b) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 34(a)(ii)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F104 S. 82(1A) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 11**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F105 82(2)(a)(b) substituted for words (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 34(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F106 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 10, **Sch. 6 para. 1**

[F107**82A Parties may examine each other's witnesses etc.**

It shall be competent for the prosecutor to examine any witness or put in evidence any production included in any list or notice lodged by the accused, and it shall be competent for an accused to examine any witness or put in evidence any production included in any list or notice lodged by the prosecutor or by a co-accused.**]**

Textual Amendments

F107 S. 82A inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 27, **Sch. 6 para. 2**

83 Accused entitled to see productions.

The accused shall be entitled to see the productions according to the existing law and practice in the office of the sheriff clerk of the district in which the court of the **[**F108trial diet**]** is situated or, where the **[**F108trial diet**]** is to be in the High Court in Edinburgh, in the Justiciary Office.

Textual Amendments

F108 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 11, **Sch. 6 para. 1**

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84 Proof as to productions.

Where a person who has examined a production is adduced to give evidence with regard thereto and the production has been lodged at least eight days before the **[**F109trial diet**]**, it shall not be necessary to prove

[F110(a)**]** 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**[**F111 ; or

(b) that the production examined by him is that taken possession of by the procurator fiscal or the police,**]**

unless the accused, at least four days before the **[**F109trial diet**]**, gives to the Crown Agent, where he is cited to the High Court for the **[**F109trial diet**]**, or to the procurator fiscal of the district to the court of which he is cited for the **[**F109trial 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.**[**F112or, as the case may be, that it is that taken possession of as aforesaid**]**

Textual Amendments

F109 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 12, **Sch. 6 para. 1**

F110 S. 84: word "(a)". inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 23(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F111 Word "or" and subsection (b) inserted in s.84 (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s.23(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F112 Words in s. 84 inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 23(c)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F113**84A Agreement of evidence.**

(1) Subject to subsection (2) below, the prosecutor and the accused (or each accused if more than one) shall each identify any facts which are facts—

(a) which he would, apart from this section, be seeking to prove;

(b) which he considers unlikely to be disputed by the other party (or by any of the other parties); and

(c) in proof of which he does not wish to lead oral evidence,

and shall (without prejudice to section 16 of the Criminal Justice (Scotland) Act 1995 (procedure for proving uncontroversial evidence)) take all reasonable steps to secure the agreement of the other party (or each of the other parties) to them; and the other party (or each of the other parties) shall take all reasonable steps to reach such agreement.

(2) Subsection (1) above shall not apply in relation to proceedings as respects which the accused (or any of the accused if more than one) is not legally represented.

(3) The duty under subsection (1) above applies from the date of service of the indictment until the swearing of the jury or, where intimation is given under section 102 of this Act, the date of that intimation.**]**

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Textual Amendments

F113 S. 84A inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995, c. 20, s. 12(1); S.I 1996/517, arts. 3(2), 4-6, Sch. 2

Preparation of Jury List, etc.

[F114 85 Number of jurors to be returned for trial.

For the purposes of a trial, the sheriff principal shall return such number of jurors as he thinks fit or, in relation to a trial in the High Court, such other number as the Lord Justice Clerk or any Lord Commissioner of Justiciary may direct.]

Textual Amendments

F114 S. 85 substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 35**; S.I 1996/517, arts. 3(2), 4-6, Sch. 2

86 Jurors for High Court at Edinburgh.

[F115(1)] [F116The Lord Justice General, whom failing the Lord Justice Clerk, may give directions as to] the areas from which and the proportions in which jurors are to be summoned for trials [F117to be held in the High Court], and for any such trial the sheriff principal of the sheriffdom in which the trial is to take place shall requisition the required number of jurors from the areas and in the proportions so specified.

[F118(2) Where a sitting of the High Court is to be held at a town in which the High Court does not usually sit, the jury summoned to try any case in such a sitting shall be summoned from the general jury roll of the sheriff court district in which the town is situated.]

Textual Amendments

F115 S. 86 renumbered s. 86(1) by virtue of Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 5(b)**

F116 Words substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 5(a)**

F117 Words substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 5(b)**

F118 S. 86(2) added by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 5(b)**

87, 88. . . . . F119

Textual Amendments

F119 Ss. 87, 88 repealed by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(2), **Sch. 2**

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89 Jurors in inferior courts.

For the purpose of a trial in any inferior court the clerk of court shall be furnished with a list of names from the **[**F120lists of potential jurors**]** of the sheriff court district in which the court is held, containing the number of persons required.

Textual Amendments

F120 Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 39:1), s. 25(2), **Sch. 2 para. 16**

90 Order in which names of jurors are to be taken.

The sheriffs principal, in any return of jurors made by them to a court, shall take the names in regular order, beginning at the top of the **[**F121lists of potential jurors**]**, in each of the sheriff court districts, as required; and as often as any juror shall be returned to them, they shall mark or cause to be marked, in the **[**F121lists of potential jurors**]** of their respective sheriff court districts the date when any such juror shall have been returned to serve; and in any such return they shall commence with the name immediately after the last in the preceding return, without regard to the court to which the return was last made, and taking the subsequent names in the order in which they shall have been entered, as herein directed, and so to the end of the lists respectively.

Textual Amendments

F121 Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 39:1), s. 25(2), **Sch. 2 para. 16**

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

Where a person whose name has been entered in the **[**F122lists of potential jurors**]** dies, or **[**F123ceases to be qualified to serve as a juror**]**, the sheriff principal, in making returns of jurors in accordance with the provisions of this Act, shall pass over the name of that person, but the date at which his name shall have been so passed over, and the reason therefor, shall be entered at the time in the **[**F122lists of potential jurors**]**.

Textual Amendments

F122 Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 39:1), s. 25(2), **Sch. 2 para. 16**

F123 Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 72:2), **Sch. 2 para. 6**

92 Jurors as returned to serve on trials.

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

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93 Names of jurors to be inserted in one roll.

The persons to serve upon assizes in the High Court shall be listed and their names and **[**[F124]addresses**]** shall be inserted in one roll to be signed by the judge.

Textual Amendments

F124 Word in s. 93 substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by c. 20, s. 117(1), Sch. 6 Pt. I para. 36; S.I 1996/517, arts. 3(2), 4-6, Sch. 2

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

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

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

No irregularity in making up the lists in accordance with the provisions of this Act, or in transmitting the same, or in the warrant of citation, or in summoning jurors, or in returning any execution of citation, shall constitute an objection to jurors whose names shall be included in the jury list, reserving always to the court to judge of the effect of an objection founded on any felonious act by which jurors may be returned to serve in any case contrary to the provisions of this Act or the [M18]Jurors (Scotland) Act 1825.

Marginal Citations

M18 1825 c. 22**(72:2).**

96 Note of jury list.

(1) It shall not be necessary to serve any list of jurors upon the accused, but on and after the date of the service of an indictment a list of jurors, prepared under the directions of the **[**[F125]clerk of the court before which the trial is to take place,**]** shall be kept in the office of the sheriff clerk of the district in which the court of the **[**[F125]trial diet**]** is situated, and the accused shall be entitled to have a copy supplied to him on application free of charge.

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

Textual Amendments

F125 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 13, **Sch. 6 para. 1**

Changes to legislation: *Criminal Procedure (Scotland) Act 1975, Procedure prior to Trial is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Modifications etc. (not altering text)
C7 S. 96 restricted by S.I. 1988/110, **rule 11**

97 Sufficient jurors only to be summoned.

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

98 Jurors to be cited by registered letter or recorded delivery.

The sheriff clerk of the sheriffdom in which a sitting of the High Court is to be held, or his depute, or the sheriff clerk of the sheriff court district in which any juror is to be cited, or his depute, where the citation is for a trial before a sheriff, shall fill up and sign a proper citation addressed to each such juror, and shall cause the same to be transmitted to him by letter, sent to him at his place of residence as stated in the **[**F126lists of potential**]** jurors by registered post or recorded delivery **[**F127or to be served on him by an officer of law**]**; and a certificate under the hand of such sheriff clerk, or his depute, of the citation of any jurors or juror in manner herein provided, shall be deemed a legal citation:

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

Textual Amendments
F126 Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 39:1), s. 23(2), **Sch. 2 para. 17**
F127 Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 29**

99 Fining of jurors for non-attendance.

(1) Persons cited to attend as jurors may **[**F128, unless they have been excused in respect thereof under section 1 of the M19Law Reform (Miscellaneous Provisions) (Scotland) Act 1980,**]** be fined **[**F128up to £200**]** if they fail to attend **[**F128in compliance with the citation**]**.

[F129(2) A fine imposed under subsection (1) above may, on application, be remitted—

(a) by a Lord Commissioner of Justiciary where imposed in the High Court;

(b) by the sheriff where imposed in the sheriff court;

and no court fees or expenses shall be exigible in respect of any such application.**]**

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Textual Amendments

F128 Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 72:2), **s. 2(3)(a)**

F129 S. 99(2) substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 72:2), **s. 2(3)(b)**

Marginal Citations

M19 1980 c. 55**(72:2).**

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

(1) A person shall not be exempted by sex or marriage from the liability to serve as a juror [F130]. . ..

[F131](2) . . . . . .

[F131](3) . . . . . .

Textual Amendments

F130 Words in s. 100(1) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 37, **Sch. 7 Pt. I**; S.I 1996/517, arts. 3(2), 4-6, Sch. 2

F131 S. 100(2)(3) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 37, **Sch. 7 Pt. I**; S.I 1996/517, arts. 3(2), 4-6, Sch. 2

Delay in trial

[F132101 Prevention of delay in trials.

(1) An accused shall not be tried on indictment for any offence unless such trial is commenced within a period of 12 months of the first appearance of that accused on petition in respect of that offence; and, failing such commencement within that period, the accused shall be discharged forthwith and thereafter he shall be for ever free from all question or process for that offence:

Provided that—

(i) nothing in this subsection shall bar the trial of an accused for whose arrest a warrant has been granted for failure to appear at a diet in the case;

(ii) on application made for the purpose, the sheriff or, where an indictment has been served on the accused in respect of the High Court, a single judge of that court, may on cause shown extend the said period of 12 months.

[F133(1A) In calculating the period of 12 months specified in subsection (1) above there shall be left out of account any period during which the accused is detained, other than while serving a sentence of imprisonment or detention, in any other part of the United Kingdom or in any of the Channel Islands or the Isle of Man in any prison or other institution or place mentioned in subsection (1) or (1A) of section 29 of the Criminal Justice Act 1961 (transfer of prisoners for certain judicial purposes).]

Changes to legislation: *Criminal Procedure (Scotland) Act 1975, Procedure prior to Trial is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) Subject to subsections (3), (4) and (5) below, an accused who is committed for any offence until liberated in due course of law shall not be detained by virtue of that committal for a total period of more than—

(a) 80 days, unless within that period the indictment is served on him, which failing he shall be liberated forthwith; or

(b) 110 days, unless the trial of the case is commenced within that period, which failing he shall be liberated forthwith and thereafter he shall be for ever free from all question or process for that offence.

(3) A single judge of the High Court may, on application made to him for the purpose, for any sufficient cause extend the period mentioned in subsection (2)(a) above:

Provided that he shall not extend the said period if he is satisfied that, but for some fault on the part of the prosecution, the indictment could have been served within that period.

(4) A single judge of the High Court may, on application made to him for the purpose, extend the period mentioned in subsection (2)(b) above where he is satisfied that delay in the commencement of the trial is due to—

(a) the illness of the accused or of a judge;

(b) the absence or illness of any necessary witness; or

(c) any other sufficient cause which is not attributable to any fault on the part of the prosecutor.

(5) The grant or refusal of any application to extend the periods mentioned in this section may be appealed against by note of appeal presented to the High Court; and that Court may affirm, reverse or amend the determination made on such application.

(6) For the purposes of this section, a trial shall be taken to commence when the oath is administered to the jury.**]**

Textual Amendments

F132 S. 101 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 14(1), **Sch. 6 para. 1**

F133 S. 101(1A) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 15**; S.I. 1996/517, **arts. 3(2)**, 4-6 sch. 2

Accelerated Trial

[F134 102 Procedure where accused desires to plead guilty.

(1) Where an accused intimates in writing to the Crown Agent that he intends to plead guilty and desires to have his case disposed of at once, the accused may be served with an indictment (unless one has already been served) and a notice to appear at a diet of the appropriate court not less than four clear days after the date of the notice; and it shall not be necessary to lodge or give notice of any list of witnesses or productions.

(2) In subsection (1) above, "appropriate court" means—

(a) in a case where at the time of the intimation mentioned in that subsection an indictment had not been served, either the High Court or the sheriff court; and

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(b) in any other case, the court specified in the notice served under section 75 of this Act on the accused.

(3) If at any such diet the accused pleads not guilty to the charge or pleads guilty only to a part of the charge, and the prosecutor declines to accept such restricted plea, the diet shall be deserted pro loco et tempore, and thereafter the cause may proceed in accordance with the other provisions of this Part of this Act except that in a case mentioned in paragraph (b) of subsection (2) above the court may postpone the trial diet and the period of such postponement shall not count towards any time limit applying in respect of the case.**]**

Textual Amendments

F134 S. 102 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 16, **Sch. 6 para. 1**

Modifications etc. (not altering text)

C8 S. 102(3) excluded by S.I. 1988/110, **rule 12(3)**

First Diet

[F135 103 Pleas of guilty.

(1) Where at any diet the accused tenders a plea of guilty to the indictment or any part thereof he **[**F136shall do so in open court and**]** shall be required to sign a written copy of the plea (if he is able to do so); and the judge shall countersign such copy.

(2) Where the plea is to part only of the charge and the prosecutor does not accept such plea, such non-acceptance shall be recorded.

(3) Where a person charged on indictment with any offence tenders a plea of guilty to any other offence of which he could competently be found guilty on the trial of such indictment, and that plea is accepted by the prosecutor, it shall be competent to convict such person of the offence to which he has so pled guilty and to sentence him accordingly.

(4) Nothing in subsection (1) above shall require a plea by or on behalf of a company to be signed.**]**

Textual Amendments

F135 S. 103 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 14, **Sch. 6 para. 1**

F136 Words in s. 103(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 38**; S.I 1996/517, arts. 3(2), 4-6, Sch. 2

[F137 104 Remit to High Court for sentence.

(1) Where at any diet in proceedings on indictment in the sheriff court, sentence falls to be imposed but the sheriff holds that any competent sentence which he can impose is inadequate so that the question of sentence is appropriate for the High Court, he shall—

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(a) endorse upon the record copy of the indictment a certificate of the plea or the verdict (as the case may be);

(b) by interlocutor written on such record copy remit the convicted person to the High Court for sentence; and

(c) append to such interlocutor a note of his reasons for such remit;

and such remit shall be sufficient warrant to bring the accused before the High Court for sentence and shall remain in force until the convicted person is sentenced.

[F138(1A) Where under any enactment an offence is punishable on conviction on indictment by imprisonment for a term exceeding three years but the enactment either expressly or impliedly restricts the power of the sheriff to impose a sentence of imprisonment for a term exceeding three years, it shall be competent for the sheriff to remit the convicted person to the High Court for sentence under subsection (1) above; and it shall be competent for the High Court to pass any sentence which it could have passed if the person had been convicted before it.**]**

(2) When the Clerk of Justiciary receives the record copy of the indictment he shall send a copy of the note of reasons to the convicted person or his solicitor and to the Crown Agent.

(3) Subject to subsection (2) above, the note of reasons shall be available only to the High Court and the parties.**]**

Textual Amendments

F137 S. 104 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 15, **Sch. 6 para. 1**

F138 S. 104(1A) inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a)**, 58(2)

105— 107. . . . . . F139

Textual Amendments

F139 Ss. 74(3), 105–107, 120–122 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, 8, **Sch. 8**

108 Certain objections competent only at first diet.

[F140(1)**]** No objection by the accused to the validity of the citation against him, on the ground of any discrepancy between the record copy of the indictment and the copy served on him, or on account of any error or deficiency in such service copy or in the notice of citation, shall be competent **[**F141except by leave of the court on cause shown, unless his intention to raise the objection is stated in a notice under section **[**F14275A(2) or**]** 76(1)(a) of this Act**]**, and no such discrepancy, error or deficiency shall entitle the accused to object to plead to such indictment unless the **[**F143court**]** shall be satisfied that the same tended substantially to mislead and prejudice the accused.

[F144(2) Except by leave of the court on cause shown—

(a) no matter relating to the competency or relevancy of the indictment shall be raised;

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(b) no plea in bar of trial shall be submitted; [F145]. . .

(c) no application for separation or conjunction of charges or trials shall be submitted, **[**[F146]; and

(d) no preliminary objection under section 67 of this Act shall be raised,**]**

unless the intention to do so has been stated in a notice under section **[**[F147]75A(2) or**]** 76(1) of this Act.**]**

Textual Amendments

F140 Word inserted by virtue of Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 19(b), **Sch. 6 para. 1**

F141 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 19(a), **Sch. 6 para. 1**

F142 Words in S. 108(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 39(a)**; S.I 1996/517, arts. 3(2), 4-6, Sch. 2

F143 Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 39:1), s. 23(2), **Sch. 2 para. 18**

F144 S. 108(2) inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 19(b), **Sch. 6 para. 1**

F145 Word in s. 108(2)(b) repealed (18.9.1993) by 1993 c. 9, s. 47(1)(3), Sch. 5 para. 1(4)(a), **Sch. 7 Pt. I** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(3), 4(1)(c), **Sch. 2**

F146 S. 108(2)(d) and the word "and" immediately preceding inserted (18.9.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(4)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(3), 4(1)(c), **Sch. 2**

F147 Words in S. 108(2) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 39(b)**; S.I 1996/517, arts. 3(2), 4-6, Sch. 2

109 Interlocutor of relevancy unnecessary.

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

[F148]110 . . . . . .

Textual Amendments

F148 S. 110 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 40, **Sch. 7 Pt. I**; S.I 1996/517, arts. 3(2), 4-6, Sch. 2

111 Postponement on old warrant where diet deserted.

Where a diet is deserted*pro loco et tempore*, or where a diet is postponed or adjourned, or an order issued for the trial to take place at a different place from that first given notice of, it shall not be necessary that a new warrant should be granted for the

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incarceration of the accused, but the warrant of commitment on which he is at the time in custody till liberated in due course of law shall continue in force.

[F149 111A Computation of period.

Where the last day of any period mentioned in section 75, 76, 76A or 80 of this Act falls on a Saturday, Sunday or court holiday, such period shall extend to and include the next day which is not a Saturday, Sunday or court holiday.]

Textual Amendments

F149 S. 111A inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 31**

Sittings of High Court

[F150 112 Place of High Court Sittings.

Any crime or offence which is triable on indictment may be tried by the High Court sitting at any place in Scotland.]

Textual Amendments

F150 S. 112 substituted for s. 112(1)(2) by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a)**, 57(1)

113 Judges in High Court.

(1) Every person who shall be appointed to the office of one of the senators of the College of Justice in Scotland shall, by virtue of such appointment, be a Lord Commissioner of Justiciary in Scotland.

(2) If any difference shall arise as to the rotation of judges in the High Court, the same shall be determined by the Lord Justice General [F151 whom failing by the Lord Justice Clerk].

(3) F152

(4) The Lord Justice General, Lord Justice Clerk, or any Lord Commissioner of Justiciary may preside alone at the trial of any panel before the High Court, and when so presiding shall constitute a quorum of the High Court:

Provided that in any trial of difficulty or importance . . . F153 it shall be competent for two or more judges in the High Court to preside [F154 for the whole or any part of the trial].

Textual Amendments

F151 Words added by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 6**

F152 S. 113(3) repealed by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(2), **Sch. 2**

***Changes to legislation:** Criminal Procedure (Scotland) Act 1975, Procedure prior to Trial is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F153 Words which were inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 32** are now repealed by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(2), **Sch. 2**

F154 Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 32**

[F155 114 Fixing of High Court sittings.

(1) The High Court shall sit at such times and places as the Lord Justice General, whom failing the Lord Justice Clerk, may, after consultation with the Lord Advocate, determine.

(2) Without prejudice to subsection (1) above, the High Court shall hold such additional sittings as the Lord Advocate may require.

(3) Where an accused person has been cited to attend a sitting of the High Court, the prosecutor may, at any time before the commencement of his trial, apply to the Court to transfer the case to another sitting of the High Court; and a single judge of the High Court may,—

(a) after giving the accused or his counsel an opportunity to be heard; or

(b) on the joint application of all parties,

make an order for the transfer of the case.

(4) Where no cases have been indicted for a sitting of the High Court or if it is no longer expedient that a sitting should take place, it shall not be necessary for the sitting to take place.

(5) If any case remains indicted for a sitting which does not take place in pursuance of subsection (4) above, subsection (3) above shall apply in relation to the transfer of any such case to another sitting.**]**

Textual Amendments

F155 S. 114(1)—(5) substituted for S. 114(1)(2) by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a)**, 57(2)

[F156 114A Transfer of sheriff court solemn proceedings.

(1) Where an accused person has been cited to attend a sitting of the sheriff court the prosecutor may, at any time before the commencement of his trial, apply to the sheriff to transfer the case to a sheriff court in any other district in that sheriffdom.

(2) On an application under subsection (1) above the sheriff may—

(a) after giving the accused or his counsel or solicitor an opportunity to be heard; or

(b) on the joint application of the parties,

make an order for the transfer of the case.**]**

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Textual Amendments

F156 S. 114A inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 41**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

115— 119. . . . . . F157

Textual Amendments

F157 Ss. 115–119 repealed by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(2), **Sch. 2**

120 . . . . . F158

Textual Amendments

F158 Ss. 74(3), 105–107, 120–122 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, 8, **Sch. 8**

Procedure at Trial

121, 122. . . . . . F159

Textual Amendments

F159 Ss. 74(3), 105–107, 120–122 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, 8, **Sch. 8**

123 Amendment of indictment.

(1) No trial shall fail or the ends of justice be allowed to be defeated by reason of any discrepancy or variance between the indictment and the evidence.

(2) It shall be competent at any time prior to the determination of the case, unless the court see just cause to the contrary, to amend the indictment by deletion, alteration or addition, so as to cure any error or defect therein, or to meet any objection thereto, or to cure any discrepancy or variance between the indictment and the evidence.

(3) Nothing in this section shall authorise an amendment which changes the character of the offence charged, and, if the court shall be of opinion that the accused may in any way be prejudiced in his defence on the merits of the case by any amendment made under this section, the court shall grant such remedy to the accused by adjournment or otherwise as to the court may seem just.

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(4) An amendment made under this section shall be sufficiently authenticated by the initials of the clerk of court.

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

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

F160 . . ..

Textual Amendments

F160 Proviso to s. 124 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1996 c. 20, s. 117, Sch. 6 Pt. I para. 42, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F161 125 On plea of not guilty, plea to be recorded and jury balloted.

Where the accused pleads not guilty, the clerk of court shall record that fact and proceed to ballot the jury.]

Textual Amendments

F161 S. 125 and sidenote substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 43**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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

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

127 Procedure where trial does not take place.

(1) Where at the [trial diet]—

(a) the diet has been deserted*pro loco et tempore*for any [F162cause], or

(b) an indictment is for any cause not brought to trial and no order has been given by the court postponing such trial or appointing it to be held at a subsequent date at some other sitting of the court,

it shall be lawful at any time within nine clear days after the [F163last day of the sitting in which the trial diet was to be held]to give notice to the accused on another copy of theindictment to appear to answer such indictment at a further diet either in the High Court or in the sheriff court when the charge is one that can be lawfully tried in that court, notwithstanding that the original citation to a [F164trial diet] was to a different court.

[F165(1ZA) Without prejudice to subsection (1) above, where a trial diet has been deserted pro loco et tempore and the court has appointed a further trial diet to be held on a subsequent

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date at the same sitting the accused shall require to appear and answer the indictment at that further diet.**]**

[F166(1A) The prosecutor shall not raise a fresh libel in a case where the court has deserted the trial diet*simpliciter*(and its decision in that regard has not been reversed on appeal).**]**

(2) The notice referred to in subsection (1) of this section shall be in the form set out in F167. . . an Act of Adjournal under this Act or as nearly as may be in such form.

(3) The further diet specified in the notice referred to in subsection (1) of this section shall be not earlier than nine clear days from the giving of such notice.

(4) On or before the day on which such notice is given, a list of jurors shall be prepared, signed and kept by the sheriff clerk of the district to which such notice applies in the manner provided in section 96 of this Act.

[F168(5) The warrant issued under section 69 of this Act shall be sufficient warrant for the citation of the accused and witnesses to any further diet appointed under this section.**]**

Textual Amendments

F162 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 27(b), **Sch. 6 para. 1**

F163 Words in s. 127(1) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 44(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F164 Words substituted by Criminal Justice (Scotland) Act 1980 (c.62, SIF 39:1), Sch. 4 para. 27(a), **Sch. 6 para. 1**

F165 S. 127(1ZA) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 44(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F166 S. 127(1A) inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **s. 18(1)**

F167 Words in s. 127(2) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 44(c), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F168 S. 127(5) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 44(d)**; S.I. 1996/517, arts. 3(a), 4-6, **Sch. 2**

128 Provision for death or illness of judge.

[F169(1) Where the court is unable to proceed owing to the death, illness or absence of the presiding judge, the clerk of court may convene the court (if necessary) and—

(a) in a case where no evidence has been led, adjourn the diet and any other diet appointed for that sitting to—

(i) a time later the same day, or a date not more than seven days later, when he believes a judge will be available; or

(ii) a later sitting not more than two months after the date of the adjournment; or

(b) in a case where evidence has been led—

(i) adjourn the diet and any other diet appointed for that sitting to a time later the same day, or a date not more than seven days later, when he believes a judge will be available; or

(ii) with the consent of the parties, desert the diet pro loco et tempore.

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(1A) Where a diet has been adjourned under sub-paragraph (i) of either paragraph (a) or paragraph (b) of subsection (1) above the clerk of court may, where the conditions of that subsection continue to be satisfied, further adjourn the diet under that sub-paragraph; but the total period of such adjournments shall not exceed seven days.

(1B) Where a diet has been adjourned under subsection (1)(b)(i) above the court may, at the adjourned diet—

(a) further adjourn the diet; or

(b) desert the diet pro loco et tempore.**]**

(2) Where a diet is deserted in pursuance of subsection **[**F170(1)(b)(ii) or (1B)(b)**]**of this section the Lord Advocate may raise and insist in a new indictment, and in any such case where the accused is in custody it shall not be necessary that a new warrant for his incarceration be granted, and the warrant of commitment on which he is at the time in custody till liberation in due course of law shall continue in force, and in any such case where the accused is at liberty on bail his bail shall continue in force.

Textual Amendments

F169 S. 128(1)(1A)(1B) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) for s. 128(1) by 1995 c. 20, **s. 30(2)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F170 Words in s. 128(2) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 30(3)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

129 Jury to be chosen by ballot in open court.

The jurors for the trial of any case shall be chosen in open court by ballot from the list of persons summoned **[**F171in such manner as shall be prescribed by Act of Adjournal, and the persons so chosen shall be the jury to try the accused, and their names shall be recorded in the minutes of the proceedings.**]**.

Textual Amendments

F171 Words in s. 129 substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 45**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

130 Challenges and objections to jurors.

F172(1) . . . . . .

F172(2) . . . . . .

F172(3) . . . . . .

[F173(3A) Where, before a juror is sworn to serve, the parties jointly apply for him to be excused the court shall, notwithstanding that no reason is given in the application, excuse that juror from service.**]**

(4) Nothing in this section shall affect the right of the accused or the prosecutor to object to any juror on cause shown.

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(5) If any objection is taken to a juror on cause shown and such objection is founded on the want of sufficient qualification as provided by section **[**F174 1(1) of the M20 Law Reform (Miscellaneous Provisions) (Scotland) Act 1980**]**, such objection shall be proved only by the oath of the juror objected to.

(6) No objection to a juror shall be competent after he has been sworn to serve.

Textual Amendments

F172 S. 130(1)-(3) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, ss. 8(a), 117(2), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F173 S. 130(3A) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 8(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F174 Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 72:2), **Sch. 2 para. 7**

Marginal Citations

M20 1980 c. 55**(72:2).**

131 Juror without citation not to be objected to.

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

132 Jurors chosen for one trial may continue to serve.

(1) The jurors chosen for any particular trial may, when that trial is disposed of, without any new ballot, serve on the trials of other persons accused, provided that—

(a) such persons and the prosecutor consent thereto,

(b) the names of such jurors are contained in the list of assize, and

(c) such jurors are duly sworn to serve on each successive trial.

F175(2) . . . . . .

Textual Amendments

F175 S. 132(2) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 46, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

133 Jurors may be excused.

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

134 Provision for death or illness of jurors.

Where in the course of any trial any juror dies, or the court is satisfied that **[**F176 it is for any reason inappropriate for any juror**]** to continue to serve as a juror, the court may in its discretion, on application made by **[**F177 the prosecutor**]** or an accused, direct that the

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trial shall proceed before the remaining jurors (if they shall be not less than twelve in number), and where any such direction is given the remaining jurors shall be deemed in all respects to be a properly constituted jury for the purpose of the trial and shall have power to return a verdict accordingly whether unanimous or by majority:

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

Textual Amendments

F176 Words in s. 134 substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 47(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F177 Words in s. 134 substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 47(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F178 135. Clerk to state charge, and swear jury.

(1.) When a jury has been balloted, the clerk of court shall inform the jury of the charge against the accused either by reading the same in the words of the indictment (with the substitution of the third person for the second) or, if the presiding judge shall, because of the length or complexity of the indictment, so direct, by reading to the jury a summary of the charge approved by the judge; and the clerk of court shall thereafter administer the oath in common form; and **[**F179copies of the indictment shall be provided for each member of the jury without lists of witnesses or productions**]**.

[F180(2) Subject to subsection (3) below, where the accused has lodged a plea of special defence, the clerk of court shall, after informing the jury, in accordance with subsection (1) above, of the charge against the accused, and before administering the oath, read to the jury the plea of special defence.

(3) Where the presiding judge on cause shown so directs, the plea of special defence shall not be read over to the jury in accordance with subsection (2) above; and in any such case the judge shall inform the jury of the lodging of the plea and of the general nature of the special defence.

(4) Copies of a plea of special defence shall be provided for each member of the jury.**]**

Textual Amendments

F178 S. 135 renumbered as s.135(1) (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 48(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F179 Words in s. 135(1) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 48(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F180 S. 135(2)-(4) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 48(c)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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136 Trial to be continuous.

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

137 Seclusion of jury.

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

[F181 137A Verdict by judge alone.

(1) Where, at any time after the jury has been sworn to serve in any trial, the prosecutor intimates to the court that he does not intend to proceed in respect of an offence charged in the indictment, the judge shall acquit the accused of that offence and the trial shall proceed only in respect of any other offence charged in the indictment.

(2) Where, at any time after the jury has been sworn to serve in any trial, the accused intimates to the court that he is prepared to tender a plea of guilty as libelled, or such other plea as the Crown is prepared to accept, in respect of any offence charged in the indictment, the judge shall accept the plea tendered and shall convict the accused accordingly.

(3) Where an accused is convicted under subsection (2) above of an offence—

(a) the trial shall proceed only in respect of any other offence charged in the indictment; and

(b) without prejudice to any other power of the court to adjourn the case or to defer sentence, the judge shall not sentence him or make any other order competent following a conviction until a verdict has been returned in respect of every offence mentioned in paragraph (a) above.**]**

Textual Amendments

F181 S. 137A inserted (18.9.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(5)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(3), 5(b), **Sch.2**

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

(1) No person adduced as a witness shall be excluded from giving evidence by reason of having been convicted of or having suffered punishment for crime, or by reason of interest, or by reason of agency or of partial counsel, or by reason of having appeared without citation or without having been duly cited to attend, or by reason of having been precognosced subsequently to the date of citation.

(2) Every person so adduced, who is not otherwise by law disqualified from giving evidence, shall be admissible as a witness, notwithstanding any objection offered on any of the above-mentioned grounds.

(3) Nothing in this section shall prevent such witness from being examined on any point tending to affect his credibility.

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(4) Where any person who is or has been an agent of the accused shall be adduced and examined as a witness for the accused, it shall not be competent to the accused to object, on the ground of confidentiality, to any question proposed to be put to such witness on matter pertinent to the issue of the guilt of the accused.

139 Witnesses admissible notwithstanding relationship to parties.

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

[F182 139A Power to permit witness to be in court during trial.

The court may, on an application by any party to the proceedings, permit a witness to be in court during the proceedings or any part of the proceedings before he has given evidence if it appears to the court that the presence of the witness would not be contrary to the interests of justice.]

Textual Amendments

F182 S. 139A inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a)**, 63

140 Presence in court not to disqualify witnesses in certain cases.

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

[F183 140A No case to answer.

(1) Immediately after the close of the evidence for the prosecution, the accused may intimate to the court his desire to make a submission that he has no case to answer both—

(a) on an offence charged in the indictment; and

(b) on any other offence of which he could be convicted under the indictment F184 . . ..

(2) Such a submission shall be heard by the judge in the absence of the jury.

(3) If, after hearing both parties, the judge is satisfied that the evidence led by the prosecution is insufficient in law to justify the accused being convicted of the offence charged in respect of which the submission has been made or of such other offence as is mentioned, in relation to that offence, in paragraph (b) of subsection (1) above, he shall acquit him of the offence charged in respect of which the submission has been

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made and the trial shall proceed only in respect of any other offence charged in the indictment.

(4) If, after hearing both parties, the judge is not satisfied as is mentioned in subsection (3) above, he shall reject the submission and the trial shall proceed, with the accused entitled to give evidence and call witnesses, as if such submission had not been made.**]**

Textual Amendments

F183 S. 140A inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 19(1), **Sch. 6 para. 2**

F184 Words in s. 140A(1)(b) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 49, **Sch. 7 Pt.I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

141 Accused and spouse competent witnesses for defence.

[F185(1)**]** The accused . . . F186 shall be **[**F187a competent witness**]** for the defence at every stage of the case, whether the accused is on trial alone or along with a co-accused:

Provided that—

(a) the accused shall not be called as a witness in pursuance of this section except upon his own application **[**F188or in accordance with subsection (2) or (3) below**]**;

F189(b) . . . . . .

(c) . . . F190

(e) the accused who gives evidence on his own behalf in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged;

(f) the accused who gives evidence on his own behalf in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless—

(i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged; or

(ii) the accused or his counsel or solicitor has asked questions of the witnesses for the prosecution with a view to establish the accused's good character **[**F191or impugning the character of the complainer**]**, or the accused has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of the witnesses for the prosecution **[**F191or of the complainer**]**; or

(iii) the accused has given evidence against any other person charged **[**F192in the same proceedings**]**;

(g) every person called as a witness in pursuance of this section . . . F186 shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

[F193(1A) In a case to which sub-paragraph (ii) of paragraph (f) of the proviso to subsection (1) above applies, the prosecutor shall be entitled to ask the accused a question of a kind

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specified in that paragraph only if the court, on the application of the prosecutor, permits him to do so.

(1B) An application under subsection (1A) above shall be made in the course of the trial but in the absence of the jury.

(1C) In subsection (1) above, references to the complainer include references to a victim who is deceased.**]**

[F194(2) The accused may—

(a) with the consent of a co-accused, call that other accused as a witness on the accused's behalf; or

(b) ask a co-accused any question in cross-examination if that co-accused gives evidence,

but he may not do both in relation to the same co-accused.

(3) The prosecutor or the accused may call as a witness a co-accused who has pleaded guilty to **[**F195or been acquitted of**]** all charges against him which remain before the court (whether or not **[**F196in a case where the co-accused has pleaded guilty to any charge,**]** he has been sentenced) **[**F197or in respect of whom the diet has been deserted**]**; and the party calling such co-accused as a witness shall not require to give notice thereof, but the court may grant any other party such adjournment or postponement of the trial as may seem just.**]**

Textual Amendments

F185 Word inserted by virtue of Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **s. 28(b)**

F186 Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 8**

F187 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 33**

F188 Words added by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 28(a), **Sch. 6 para. 1**

F189 S. 141(1)(b) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, ss. 32, 117(2), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F190 S. 141(1) provisos (c), (d) repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 8**

F191 Words in s. 141(1) proviso para. (f)(ii) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 24(1)(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F192 Words substituted with saving by Criminal Evidence Act 1979 (c. 16, SIF 47), **s. 1**

F193 S. 141(1A)-(1C) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 24(1)(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F194 S. 141(2)(3) added by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 28(c), **Sch. 6 para. 1**

F195 Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 8(a)**

F196 Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 8(b)**

F197 Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 8(c)**

[F198141ZEvidence of criminal record and character of accused.

(1) This section applies where—

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(a) evidence is led by the defence, or the defence asks questions of a witness for the prosecution, with a view to establishing the accused's good character or impugning the character of the prosecutor, of any witness for the prosecution or of the complainer; or

(b) the nature or conduct of the defence is such as to tend to establish the accused's good character or to involve imputations on the character of the prosecutor, of any witness for the prosecution or of the complainer.

(2) Where this section applies the court may, without prejudice to section 149 of this Act, on the application of the prosecutor, permit the prosecutor to lead evidence that the accused has committed, or has been convicted of, or has been charged with, offences other than that for which he is being tried, or is of bad character, notwithstanding that a witness or production concerned is not included in any list lodged by the prosecutor and that the notice required by sections 81 and 82(2) of this Act has not been given.

(3) An application under subsection (2) above shall be made in the course of the trial but in the absence of the jury.

(4) In subsection (1) above, references to the complainer include references to a victim who is deceased.**]**

Textual Amendments

F198 S. 141ZA inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 24(2)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F199 141A Evidence in relation to sexual offences.

(1) In any trial of a person on any charge to which this section applies, subject to section 141B, the court shall not admit, or allow questioning designed to elicit, evidence which shows or tends to show that the complainer—

(a) is not of good character in relation to sexual matters;

(b) is a prostitute or an associate of prostitutes; or

(c) has at any time engaged with any person in sexual behaviour not forming part of the subject matter of the charge.

(2) This section applies to a charge of committing or attempting to commit any of the following offences, that is to say

(a) rape;

(b) sodomy;

[F200(ba) clandestine injury to women;**]**

(c) assault with intent to rape;

(d) indecent assault;

(e) indecent behaviour (including any lewd, indecent or libidinous practice or behaviour);

(f) an offence under section 106(1)(a) or 107 of the M21Mental Health (Scotland) Act 1984 (unlawful sexual intercourse with mentally handicapped female or with patient);

(g) an offence under any of the following provisions of the M22Sexual Offences (Scotland) Act 1976—

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(i) section 2 (procuring by threats etc.);

[section 2A (incest);

F201(ia)

(ib) section 2B (unlawful sexual intercourse with stepchild);

(ic) section 2C (unlawful sexual intercourse of person in position of trust with child under 16);**]**

(ii) section 3 (unlawful sexual inter course with girl under 13);

(iii) section 4 (unlawful sexual intercourse with girl under 16);

(iv) section 5 (indecent behaviour towards girl between 12 and 16);

[section 7 (gross indecency between males)**]**

F202(iva)

(v) section 8 (abduction of girl under 18);

(vi) section 9 (unlawful detention of female); or

(h) an offence under section 80(7) of the M23Criminal Justice (Scotland) Act 1980 (homosexual offences).

(3) In this section "complainer" means the person against whom the offence referred to in subsection (2) above is alleged to have been committed.

(4) This section does not apply to questioning, or evidence being adduced, by the Crown.**]**

Textual Amendments

F199 S. 141A, 141B inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 39:1), s. 36(1), **Sch. 3 para. 1**

F200 S. 141A(2)(ba) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 28(1)(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F201 S. 141A(2)(ia)-(ic) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 28(1)(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F202 S. 141A(2)(iva) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 28(1)(c)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Marginal Citations

M21 1984 c. 36**(85).**

M22 1976 c. 67**(39:5).**

M23 1980 c. 62**(39:1).**

141B Exceptions to prohibition.

(1) Notwithstanding the terms of section 141A, in any trial of a person on any charge to which that section applies, where the court is satisfied on an application by that person—

(a) that the questioning or evidence referred to in section 141A(1) above is designed to explain or rebut evidence adduced, or to be adduced, otherwise that by or on behalf of that person,

(b) that the questioning or evidence referred to in section 141A(1)(c) above—

(i) is questioning or evidence as to sexual behaviour which took place on the same occasion as the sexual behaviour forming the subject-matter of the charge, or

(ii) is relevant to the defence of incrimination, or

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(c) that it would be contrary to the interests of justice to exclude the questioning or evidence referred to in section 141A(1) above,

the court shall allow such questioning or, as the case may be, admit such evidence.

(2) Where questioning or evidence is or has been allowed or admitted under this section, the court may at any time limit as it thinks fit the extent of that questioning or evidence.

(3) Any application under this section shall be made in the course of the trial but in the absence of the jury, the complainer, any person cited as a witness and the public.

[F203142 Where, in any trial, the accused is to be called as a witness he shall be so called as the first witness for the defence unless the court, on cause shown, otherwise directs.**]**

Textual Amendments

F203 S. 142 substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 50**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F204143 Spouse to be competent witness.

(1) The spouse of a person charged with an offence may be called as a witness—

(a) by that person;

(b) by a co-accused or by the prosecutor without the consent of that person.

(2) Nothing in this section shall—

(a) make the spouse of an accused a compellable witness for a co-accused or for the prosecutor in a case where such spouse would not be so compellable at common law;

(b) compel a spouse to disclose any communication made between the spouses during the marriage.

(3) The failure of the spouse of an accused to give evidence shall not be commented on by the defence or the prosecutor.**]**

Textual Amendments

F204 S. 143 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 29, **Sch. 6 para. 1**

F205144 . . . . . .

Textual Amendments

F205 S. 144 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 51, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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145 Trial in open court.

(1) Without prejudice to section 174 of this Act, no part of a trial shall take place outwith the presence of the accused

[[F206]Provided that, if during the course of his trial an accused so misconducts himself that in the view of the court a proper trial cannot take place unless he is removed, the court may order him to be removed for so long as his conduct may make necessary and the trial to proceed in his absence; but if he is not legally represented the court shall appoint counsel or a solicitor to represent his interests during such absence.**]**

(2) Where a debate has taken place on the relevance of an indictment, the judge shall give his decision as to relevance in open court in the presence of the accused.

(3) From the commencement of the leading of evidence in a trial for rape or the like the judge may, if he thinks fit, cause all persons other than the accused and counsel and solicitors to be removed from the court-room.

[F207](4) . . . . . .

Textual Amendments

F206 S. 145(1) proviso added by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 21, **Sch. 6 para. 2**

F207 S. 145(4) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 52, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F208]146 . . . . . .

Textual Amendments

F208 S. 146 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 53, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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

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

148 Examination of witness.

[F209](1)In any trial, it shall be competent for the party against whom a witness is produced and sworn in causa to examine such witness, not in cross only, but also in causa.

[[F210](2) The judge may, on the motion of either party, on cause shown order that the examination of a witness for that party ("the first witness") shall be interrupted to permit the examination of another witness for that party.

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(3) Where the judge makes an order under subsection (2) above he shall, after the examination of the other witness, permit the recall of the first witness.**]**

Textual Amendments

F209 S. 148 renumbered as s. 148(1) (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 54(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F210 S. 148(2)(3) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 54(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F211 148A Recall of witnesses.

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

Textual Amendments

F211 S. 148A inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 73(1)**

[F212 149 Additional evidence.

(1) The judge may, on a motion of the prosecutor or defence made **[F213** at any time**]** before the commencement of the speeches to the jury, permit him to lead additional evidence; but such permission shall only be granted where the judge—

(a) considers that the additional evidence is *prima facie* material; and

(b) accepts that at the time the **[F214** jury was sworn**]** either—

(i) the additional evidence was not available and could not reasonably have been made available; or

(ii) the materiality of such additional evidence could not reasonably have been foreseen by the party.

(2) The judge may permit the additional evidence to be led notwithstanding that—

(a) a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 81 and 82(2) of this Act has not been given; or

(b) a witness must be recalled.

(3) The judge may, when granting a motion in terms of this section, adjourn or postpone the trial before permitting the additional evidence to be led.**]**

Textual Amendments

F212 Ss. 149, 149A substituted for s. 149 by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 30(1), **Sch. 6 para. 2**

F213 Words substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 9(a)**

F214 Words substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 9(b)**

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149A Evidence in replication.

(1) The judge may, on a motion of the prosecutor made after the close of the defence evidence and before the commencement of the speeches to the jury, permit the prosecutor to lead additional evidence for the purpose of—

(a) contradicting evidence, **[**F215given by any defence witness**]**, which could not reasonably have been anticipated by the prosecutor; or

(b) providing such proof as is mentioned in section 147 of this Act.

(2) The judge may permit the additional evidence to be led notwithstanding that—

(a) a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 81 and 82(2) of this Act has not been given; or

(b) a witness must be recalled.

(3) The judge may when granting a motion in terms of this section, adjourn or postpone the trial before permitting the additional evidence to be led.

Textual Amendments

F215 Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 39:1), **s. 37**

150 Admissions and agreements as to evidence.

(1) In any trial F216. . . it shall not be necessary for the accused or for the prosecutor to prove any fact which is admitted by the other, or to prove any document, the terms and application of which are not in dispute between them; and a copy of any document may, where they so agree, be accepted as equivalent to the original document.

(2) For the purposes of the foregoing subsection any admission or agreement shall be made by lodging with the clerk of court a minute in that behalf signed—

[F217(a) in the case of an admission, by the party making the admission or, if that party is the accused and he is legally represented, his counsel or solicitor; and

(b) in the case of an agreement, by the prosecutor and by the accused or, if he is legally represented, his counsel or solicitor**]**

(3) Where a minute has been signed and lodged as aforesaid, any facts and documents admitted or agreed thereby shall be deemed to have been duly proved; and a copy of any document so agreed to be accepted as equivalent to the original document shall be accepted as so equivalent.

Textual Amendments

F216 Words in s. 150(1) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 55(a), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F217 S. 150(2)(a)(b) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 55(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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[F218 151 Record of proceedings at examination to be received in evidence without being sworn to by witnesses.

(1) Subject to subsection (2) below, the record made, under section 20B of this Act (with any rectification, authorised under subsection (4) of that section, incorporated), of proceedings at the examination of an accused shall be received in evidence without being sworn to by witnesses, and it shall not be necessary to insert the names of any witnesses to the record in any list of witnesses, either for the prosecution or for the defence.

(2) Subject to sections 20B(2) and 76(1)(b) of this Act, on the application of either an accused or the prosecutor, the court may refuse to allow the record or some part of the record to be read to the jury; and at the hearing of such application it shall be competent for **[**F219the prosecutor or**]** the defence to adduce as witnesses the persons who were present during the proceedings mentioned in subsection (1) above and for **[**F220either party**]** to examine those witnesses upon any matters regarding the said proceedings.

(3) "Record" in subsection (2) above comprises, as regards any trial, each record included, under section 78(2) of this Act, in the list of productions.**]**

Textual Amendments

F218 S. 151 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 6(3), **Sch. 6 para. 1**

F219 Words in s. 151(2) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 56(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F220 Words in s. 151(2) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 56(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

152 Defence to speak last.

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

153 Seclusion of jury, etc., after retiral.

F221(1) . . . . . .

(2) When the jury retire to consider their verdict, the clerk of court shall enclose the jury in a room by themselves and **[**F222, except in so far as is provided for, or is made necessary, by an instruction under subsection (3A) below,**]** neither he nor any other person shall be present with the jury after they are enclosed.

[F223(3) Except in so far as is provided for, or is made necessary, by an instruction under subsection (3A) below, until the jury intimate that they are ready to return their verdict—

(a) no person shall visit the jury and no person (save the judge—

(i) in giving a direction, whether or not sought under paragraph (b) below; or

(ii) in response to a request made under that paragraph),

shall communicate with them:

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Provided that the judge may, for the purposes of this subsection, authorise a person to act on his behalf; and

(b) no juror shall come out of the jury room other than to receive or seek a direction from the judge or to make a request—

(i) for an instruction under subsection (3A) (a), (c) or (d) below; or

(ii) regarding any matter in the cause [F224]. . ..

(3A) The judge may give such instructions as he considers appropriate as regards—

(a) the provision of meals and refreshments for the jury;

(b) the making of arrangements for overnight accommodation for the jury and for their continued seclusion if such accommodation is provided;

(c) the communication of a personal or business message, unconnected with any matter in the cause, from a juror to another person (or vice versa); or

(d) the provision of medical treatment, or other assistance, immediately required by a juror.**]**

(4) If any prosecutor or other person contravenes the provisions of this section, the accused shall be acquitted of the crime with which he is charged.

Textual Amendments

F221 S. 153(1) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 57(a), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F222 Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **s. 24(1)(a)**

F223 S. 153(3)(3A) substituted for s. 153(3) by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **s. 24(1)(b)**

F224 Words in s. 153(3)(b)(ii) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 57(b), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

154 Oral verdicts to be returned by juries.

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

Provided that where the jury are not unanimous in their verdict, the foreman shall announce that fact so that the relative entry may be made in the record . . . [F225].

Textual Amendments

F225 Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **s. 24(2)**

155 Verdicts may be returned by juries without retiring.

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

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court, so that the jury may straightaway repair to the presence of the court attended by an officer of the court.

[F226 155A Taking of other proceedings while jury out.

During the period in which, in any criminal trial, the jury are retired to consider their verdict, the judge may sit in any other proceedings; and the trial shall not fail by reason only of his so doing.]

Textual Amendments

F226 S. 155A inserted (18.9.1993) by 1993 c. 9, **s. 40(1)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), **Sch.2**

156 Interruption of trial for verdict in earlier trial.

(1) When in any criminal trial the jury shall have retired to consider their verdict, and, owing to delay in returning their verdict or for other sufficient reason, the diet in another criminal cause has been called, then, subject to the following provisions of this section, it shall be lawful to interrupt the proceedings in such other cause—

(a) in order to receive the verdict of the jury in the preceding trial, and thereafter to dispose of the cause either by passing sentence upon the panel, or by postponing sentence, or by assoilzing the panel, as the case may be;

(b) to give a direction to the jury in the preceding trial upon any matter upon which the jury may wish a direction from the judge or to hear any request from the jury regarding any matter in the cause F227. . ..

(2) Whether in any cause interruption shall be allowed shall be a matter in the discretion of the judge who presides at the trial.

(3) In no case shall the verdict of the jury in the preceding trial be returned, or sentence be imposed upon the panel, or any direction be asked or given, or any request be heard or granted, in the presence of the jury in the interrupted trial, but in every case such jury shall be directed to retire by the presiding judge.

F228(4) . . . . . .

F228(5) . . . . . .

(6) On the interrupted trial being resumed the diet shall be called de novo.

Textual Amendments

F227 Words in s. 156(1)(b) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 58(a), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F228 S. 156(4)(5) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 58(b), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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157 Interruption of trial for plea or sentence in another cause.

(1) Where in any cause the diet of which has not been called, the panel shall intimate [F229]. . . to the clerk of court that he is prepared to tender a plea of guilty as libelled or such qualified plea as the Crown is prepared to accept, or where a cause is remitted to the High Court for sentence [F229]. . ., then, subject to the following provisions of this section, any trial [F229]. . . then proceeding may be interrupted for the purpose of receiving such plea or dealing with said remitted cause and pronouncing sentence or otherwise disposing of any such cause.

[F230](2) . . . . . .

(3) In any such interposed cause, the plea of the panel shall not be tendered or accepted, nor sentence passed, in the presence of the jury in the interrupted trial, but said jury if not already retired shall be directed by the presiding judge to retire.

Textual Amendments

F229 Words in s. 157(1) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 59(a), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F230 S. 157(2) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 59(b), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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

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

[F231]159 Previous convictions.

(1) . . . . . .

(2) Where a person is convicted of an offence, the court may have regard to any previous conviction in respect of that person in deciding on the disposal of the case.

[F232](3) . . . . . .

Textual Amendments

F231 S. 159(1) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 60, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F232 S. 159(3) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 60, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

160 Laying of previous convictions before jury.

(1) Previous convictions against the accused shall not be laid before the jury, nor shall reference be made thereto in presence of the jury before the verdict is returned.

[[F233](2) Nothing in subsection (1) above shall prevent the prosecutor—

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(a) asking the accused questions tending to show that he has been convicted of an offence other than that with which he is charged, where he is entitled to do so under section 141 of this Act; or

(b) leading evidence of previous convictions where it is competent to do so—

(i) as evidence in support of a substantive charge; or

(ii) under section 141ZA of this Act.**]**

(3) . . . . . .

Textual Amendments

F233 S. 160(2) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 24(3)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

161 Laying of previous convictions before judge.

(1) Previous convictions shall not be laid before the presiding judge until the prosecutor moves for sentence, and in that event the prosecutor shall lay before the judge a copy of the notice referred to in subsection (2) or (4) of section 68 of this Act.

(2) On the conviction of the accused it shall be competent for the court to amend a notice of previous convictions so laid by deletion or alteration for the purpose of curing any error or defect therein:

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

(3) Where any such intimation as is mentioned in section 68 of this Act is given by the accused, it shall be competent to prove any previous conviction included therein in the manner set forth in section 162 of this Act, and the provisions of the said section shall apply accordingly.

(4) Any conviction which is admitted in evidence by the court shall be entered in the record of the trial.

(5) Nothing in this section or in section 68 of this Act shall prevent evidence of previous convictions being led in any case where such evidence is competent in support of a substantive charge.

162 Extract convictions to be received and manner of proof.

(1) An extract conviction of any crime committed in any part of the United Kingdom, bearing to be under the hand of the officer in use to give out such extract conviction, shall be received in evidence without being sworn to by witnesses.

(2) It shall be competent to prove by a witness or witnesses such previous conviction, or any facts relevant to the admissibility of the same, although the name of any such witness is not included in the list served on the accused; and the accused shall be entitled to examine witnesses in regard thereto.

(3) **[**F234A prison officer**]** of any prison in which the accused may have been confined on such conviction shall be a competent and sufficient witness to prove the application thereof to the accused, although he may not have been present in court at the trial to which such conviction relates.

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[F235(4) Without prejudice to subsections (1) to (3) above, where proof of a previous conviction is competent in support of a substantive charge, any such conviction or an extract of it shall, if—

(a) it purports to relate to the accused and to be signed by the clerk of court having custody of the record containing the conviction; and

(b) a copy of it has been served on the accused not less than 14 days before the trial diet,

be sufficient evidence of the application of the conviction to the accused unless, within seven days of the date of service of the copy on him, he serves notice on the prosecutor that he denies that it applies to him.

(5) A copy of a conviction or extract conviction served under subsection (4) above shall be served on the accused in such manner as may be prescribed by Act of Adjournal, and a written execution purporting to be signed by the person who served the copy together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of the copy.**]**

Textual Amendments

F234 Words in s. 162(3) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 62**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F235 S. 162(4)(5) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 29(1)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F236163 . . . . . .

Textual Amendments

F236 S. 163 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 63, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

164 Proof of previous convictions by fingerprints.

(1) A previous conviction may be proved against any person in any criminal proceedings by the production of such evidence of the conviction as is mentioned in this section and by showing that his fingerprints and those of the person convicted are the fingerprints of the same person.

(2) A certificate purporting to be signed by or on behalf of the Chief Constable of Strathclyde or the Commissioner of Police of the Metropolis, containing particulars relating to a conviction extracted from the criminal records kept by the person by or on whose behalf the certificate is signed, and certifying that the copies of the fingerprints contained in the certificate are copies of the fingerprints appearing from the said records to have been taken in pursuance of regulations for the time being in force under section 11 of the M24Prisons (Scotland) Act 1952, or under section 16 of the M25Prison Act 1952, from the person convicted on the occasion of the conviction or on the occasion of his last conviction, shall be sufficient evidence of the conviction or, as the case may be, of his last conviction and of all preceding convictions and that

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the copies of the fingerprints produced on the certificate are copies of the fingerprints of the person convicted.

(3) Where a person has been apprehended and detained in the custody of the police in connection with any criminal proceedings, a certificate purporting to be signed by the chief constable concerned or a person authorised on his behalf, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.

(4) A certificate purporting to be signed by or on behalf of the governor of a prison or of a remand centre in which any person has been detained in connection with any criminal proceedings, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.

(5) A certificate purporting to be signed by or on behalf of the Chief Constable of Strathclyde, and certifying that the fingerprints, copies of which are certified as aforesaid by or on behalf of the Chief Constable or the Commissioner of Police of the Metropolis to be copies of the fingerprints of a person previously convicted and the fingerprints certified by or on behalf of a chief constable or a governor as aforesaid, or otherwise shown, to be the fingerprints of the person against whom the previous conviction is sought to be proved, are the fingerprints of the same person, shall be sufficient evidence of the matter so certified.

(6) The method of proving a previous conviction authorised by this section shall be in addition to any other method of proving the conviction.

Marginal Citations
M24 1952 c. 52**(39:1).**
M25 1952 c. 61**(39:1).**

Procedure at trial involving children

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

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

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

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

(1) Where, in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, a person who, in the opinion of the court, is a child is called as a witness, the court may direct that all or any persons, not being

[F237(a) members or officers of the court;

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(b) parties to the case before the court, their counsel or solicitors or persons otherwise directly concerned in the case;

(c) bona fide representatives of news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings; or

(d) such other persons as the court may specially authorise to be present,

shall be excluded from the court during the taking of the evidence of that witness.**]**

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

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

Textual Amendments

F237 S. 166(1)(a)-(d) substituted for words in s. 166(1) (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 64**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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

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

168 Power of court, in respect of certain offences against a child, to refer child to [F238Principal Reporter].

Any court by or before which a person is convicted of having **[**F239committed any offence—

(a) under section 21 of the M26Children and Young Persons (Scotland) Act 1937;

(b) mentioned in Schedule 1 to this Act; or

(c) in respect of a **[**F240 female**]** person aged 17 years or over which constitutes the crime of incest,

may refer—

(i) the child in respect of whom the offence mentioned in paragraph (a) or (b) above has been committed; or

(ii) any child who is, or who is likely to become, a member of the same household as the person who has committed the offence mentioned in paragraph (b) or (c) above **[**F241or the person in respect of whom theoffence so mentioned was committed**]**,

to the **[**F242Principal Reporter**]]** and certify that the said offence shall be a ground established for the purposes of **[**F243Chapter 3 of Part II of the Children M27 (Scotland) Act 1995**]**.

Changes to legislation: *Criminal Procedure (Scotland) Act 1975, Procedure prior to Trial is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F238 S. 168: words in sidenote substituted (1.4.1996) by virtue of 1994 c. 39, s. 180(1), **Sch. 13 para. 97(8)** (with s. 74(4)); S.I. 1996/323, **art. 4(1)(b)(c)**

F239 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 34**

F240 Word in s. 168(c) repealed (*prosp.*) by 1995 c. 36, s. 105(1)(4)(5), Sch. 4 para. 24(6)(a), **Sch. 5**; (with s. 103(1))

F241 Words in s. 168(c)(ii) inserted (*prosp.*) by 1995 c. 36, s. 105(1)(4), **Sch. 4 para. 24(6)(b)** (with s. 103(1))

F242 Words in s. 168 substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 97(2)** (with s. 128(8)); S.I. 1996/323, **art. 4(1)(b)(c)**

F243 Words in s. 168 substituted (*prosp.*) by 1995 c. 36, s. 105(1)(4), **Sch. 4 para. 24(6)(c)** (with s. 103(1))

Marginal Citations

M26 1937 c. 37**(20).**

M27 1995 c. 36

[F244169 Restrictions on report of proceedings involving person under 16.

(1) No newspaper report of any proceedings in a court shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any person under the age of 16 years concerned in the proceedings, either—

(a) as being a person against or in respect of whom the proceedings are taken; or

(b) as being a witness therein;

nor shall any picture which is, or includes, a picture of a person under the age of 16 years so concerned in the proceedings be published in any newspaper in a context relevant to the proceedings:

Provided that, in any case—

(i) where the person is concerned in the proceedings as a witness only and no one against whom the proceedings are taken is under the age of 16 years, the foregoing provisions of this subsection shall not apply unless the court so directs;

(ii) the court may at any stage of the proceedings if satisfied that it is in the public interest so to do, direct that the requirements of this section (including such requirements as applied by a direction under paragraph (i) above) shall be dispensed with to such extent as the court may specify;

(iii) the Secretary of State may, after completion of the proceedings, if so satisfied by order dispense with the said requirements to such extent as may be specified in the order.

(2) This section shall, with the necessary modifications, apply in relation to sound and television **[**F245programmes included in a programme service (within the meaning of the Broadcasting Act 1990)**]** as it applies in relation to newspapers.

(3) A person who publishes matter in contravention of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding **[**F246level 4 on the standard scale**]**.

(4) In this section, references to a court shall not include a court in England, Wales or Northern Ireland.**]**

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Textual Amendments

F244 S. 169 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 22, **Sch. 6 para. 2**

F245 Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1), **Sch. 20 para. 21**

F246 Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46**, (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **s. 289G** and (N.I.) 1984/703, (N.I. 13), art. 5

170 Age of criminal responsibility.

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

171 Presumption and determination of age of child.

(1) Where a person charged with an offence is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a child, the court shall make due inquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case, but an order or judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court, and the age presumed or declared by the court to be the age of the person so brought before it shall, for the purposes of this Act or the [M28]Children and Young Persons (Scotland) Act 1937, be deemed to be the true age of that person, and, where it appears to the court that the person so brought before it has attained the age of 17 years, that person shall for the purposes of this Act or the [M29]Children and Young Persons (Scotland) Act 1937 be deemed not to be a child.

(2) The court in making any inquiry in pursuance of the foregoing subsection shall have regard to the application of the provisions of section 30(1) of the [M30]Social Work (Scotland) Act 1968 but an order or judgment of the court shall not be invalidated by any subsequent proof that the court was not informed that at the material time the person was subject to a supervision requirement or that his case had been referred to a children's hearing under Part V of that Act.

(3) Where in any indictment for any offence under the [M31]Children and Young Persons (Scotland) Act 1937 or any of the offences mentioned in **[**[F247]paragraphs **[**[F248](c)**][**[F249](d) and (e)**]** of Schedule 1 to this Act or any offence under section **[**[F250]2A**]** 11(1) to (3) or 14 of the [M32]Sexual Offences (Scotland) Act 1976**]**, it is alleged that the person by or in respect of whom the offence was committed was a child or was under or had attained any specified age, and he appears to the court to have been at the date of the commission of the alleged offence a child, or to have been under or to have attained the specified age, as the case may be, he shall for the purposes of this Act or the [M33]Children and Young Persons (Scotland) Act 1937 **[**[F247]or the [M34]Sexual Offences (Scotland) Act 1976 be presumed**]** at that date to have been a child or to have been under or to have attained that age, as the case may be, unless the contrary is proved.

(4) Where, in any indictment for any offence under the [M35]Children and Young Persons (Scotland) Act 1937 or any of the offences mentioned in Schedule 1 to this Act, it is alleged that the person in respect of whom the offence was committed was a child or was a young person, it shall not be a defence to prove that the person alleged to have been a child was a young person or the person alleged to have been a young person was a child in any case where the acts constituting the alleged offence would equally have been an offence if committed in respect of a young person or child respectively.

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(5) Where a person is charged with an offence under the [M36]Children and Young Persons (Scotland) Act 1937 in respect of a person apparently under a specified age, it shall be a defence to prove that the person was actually of or over that age.

(6) In subsection (3) of this section, references to a child (other than a child charged with an offence) shall be construed as references to a child under the age of 17 years; but except as aforesaid references in this section to a child shall be construed as references to a child within the meaning of section 462 of this Act.

Textual Amendments

F247 Words substituted by Sexual Offences (Scotland) Act 1976 (c. 67, SIF 39:5), s. 21, **Sch. 1**

F248 Word substituted by Incest and Related Offences (Scotland) Act 1986 (c. 36, SIF 39:5), s. 3(2), **Sch. 1 para. 1**

F249 Words substituted by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123, 170, Sch. 8 para. 16, **Sch. 15 para. 48**

F250 Words added by Incest and Related Offences (Scotland) Act 1986 (c. 36, SIF 39:5), s. 3(2), **Sch. 1 para. 1**

Marginal Citations

M28 1937 c. 37**(20).**

M29 1937 c. 37**(20).**

M30 1968 c. 49**(81:3).**

M31 1937 c. 37**(20).**

M32 1976 c. 67**(39:5).**

M33 1937 c. 37**(20).**

M34 1976 c. 67**(39:5).**

M35 1937 c. 37**(20).**

M36 1937 c. 37**(20).**

172 Welfare of child.

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

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

(1) Where a child who is not subject to a supervision requirement is charged with an offence and pleads guilty to, or is found guilty of, that offence the court—

(a) instead of making an order on that plea or finding, may remit the case to the **[**[F251]Principal Reporter**]** to arrange for the disposal of the case by a children's hearing; or

(b) on that plea or finding may request the **[**[F251]Principal Reporter**]** to arrange a children's hearing for the purposes of obtaining their advice as to the treatment of the child.

(2) Where a court has acted in pursuance of paragraph (b) of the foregoing subsection, the court, after consideration of the advice received from the children's hearing may, as it thinks proper, itself dispose of the case or remit the case as aforesaid.

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(3) Where a child who is subject to a supervision requirement is charged with an offence and pleads guilty to, or is found guilty of, that offence the court **[**F252dealing with the case if it is—

(a) the High Court, may; and

(b) the sheriff court, shall,

request**]** the **[**F251Principal Reporter**]** to arrange a children's hearing for the purpose of obtaining their advice as to the treatment of the child, and on consideration of that advice may, as it thinks proper, itself dispose of the case or remit the case as aforesaid.

(4) Where a court has remitted a case to the **[**F253Principal Reporter**]** under this section, the jurisdiction of the court in respect of the child shall cease, and his case shall stand referred to a children's hearing.

(5) Nothing in the provisions of this section shall apply to a case in respect of an offence the sentence for which is fixed by law.

Textual Amendments

F251 Words in s. 173(1)(a)(b)(3) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 97(2)** (with s. 128(8)); S.I. 1996/323, **art. 4(1)(b)(c)**

F252 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 35**

F253 Words in s. 173(4) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 97(8)** (with s. 128(8)); S.I. 1996/323, **art. 4(1)(b)(c)**

Procedure at trial of persons suffering from mental disorder

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

[F254(1) Where the court is satisfied, on the written or oral evidence of two medical practitioners, that a person charged on indictment with the commission of an offence is insane so that his trial cannot proceed or, if it has commenced, cannot continue, the court shall, subject to subsection (1A) below—

(a) make a finding to that effect and state the reasons for that finding;

(b) discharge the trial diet and order that a diet (in this Act referred to as an "an examination of facts") be held under section 174ZA of this Act; and

(c) remand the person in custody or on bail or, where the court is satisfied—

(i) on the written or oral evidence of two medical practitioners, that he is suffering from mental disorder of a nature or degree which warrants his admission to hospital under Part V of the Mental Health (Scotland) Act 1984; and

(ii) that a hospital is available for his admission and suitable for his detention,

make an order (in this section referred to as a "temporary hospital order") committing him to that hospital until the conclusion of the examination of facts.

(1A) Subsection (1) above is without prejudice to the power of the court, on an application by the prosecutor, to desert the diet pro loco et tempore.

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(1B) The court may, before making a finding under subsection (1) above as to the insanity of a person, adjourn the case in order that investigation of his mental condition may be carried out.

(1C) The court which made a temporary hospital order may, at any time while the order is in force, review the order on the ground that there has been a change of circumstances since the order was made and, on such review—

(a) where the court considers that such an order is no longer required in relation to a person, it shall revoke the order and may remand him in custody or on bail;

(b) in any other case, the court may—

(i) confirm or vary the order; or

(ii) revoke the order and make such other order, under subsection (1)(c) above or any other provision of this Part of this Act, as the court considers appropriate.**]**

(2) Where in the case of any person charged **[**F255on indictment with the commission of the offence**]**evidence is brought before the court that that person was insane at the time of doing the act or making the omission constituting the offence with which he is charged and the person is acquitted, the court shall direct the jury to find whether the person was insane at such time as aforesaid, and **[**F256, if so,**]**to declare whether the person was acquitted by them on account of his insanity at that time.

F257(3) . . . . . .

F257(4) . . . . . .

(5) Where it appears to a court that it is not practicable or appropriate for the accused to be brought before it for the purpose of determining whether he is insane so that his trial cannot proceed, then, if no objection to such a course is taken by or on behalf of the accused, the court may order that the case be proceeded with in his absence.

Textual Amendments

F254 S. 174(1)(1A)-(1C) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) for s. 174(1) by 1995 c. 20, **s. 47(1)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F255 Words in s. 174(2) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 65(a)(i)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F256 Words in s. 174(2) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 65(a)(ii)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F257 S. 174(3)(4) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 65(b), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F258**174ZE**xamination of facts.

(1) At an examination of facts ordered under section 174(1)(b) of this Act the court shall, on the basis of the evidence (if any) already given in the trial and such evidence, or further evidence, as may be led by either party, determine whether it is satisfied—

(a) beyond reasonable doubt, as respects any charge on indictment in respect of which the accused was being or was to be tried, that he did the act or made the omission constituting the offence; and

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(b) on the balance of probabilities, that there are no grounds for acquitting him.

(2) Where the court is satisfied as mentioned in subsection (1) above, it shall make a finding to that effect.

(3) Where the court is not so satisfied it shall, subject to subsection (4) below, acquit the person of the charge.

(4) Where, as respects a person acquitted under subsection (3) above, the court is satisfied as to the matter mentioned in subsection (1)(a) above but it appears to the court that the person was insane at the time of doing the act or making the omission constituting the offence, the court shall state whether the acquittal is on the ground of such insanity.

(5) Where it appears to the court that it is not practicable or appropriate for the accused to attend an examination of facts the court may, if no objection is taken by or on behalf of the accused, order that the examination of facts shall proceed in his absence.

(6) Subject to the provisions of this section, section 174ZB of this Act and any Act of Adjournal, the rules of evidence and procedure and the powers of the court shall, in respect of an examination of facts, be as nearly as possible those applicable in respect of a trial.

(7) For the purposes of the application to an examination of facts of the rules and powers mentioned in subsection (6) above, an examination of facts—

(a) commences when the indictment is called; and

(b) concludes when the court—

(i) acquits the person under subsection (3) above;

(ii) makes an order under subsection (2) of section 174ZC of this Act; or

(iii) decides, under paragraph (e) of that subsection, not to make an order.**]**

Textual Amendments

F258 S. 174ZA inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 49(1)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F259 174ZB Examination of facts: supplementary provisions.

(1) An examination of facts ordered under section 174(1)(b) of this Act may, where the order is made at the trial diet, be held immediately following the making of the order and, where it is so held, the citation of the accused and any witness to the trial diet shall be a valid citation to the examination of facts.

(2) A warrant for citation of an accused and witnesses under section 69 of this Act shall be sufficient warrant for citation to an examination of facts.

(3) Where an accused person is not legally represented at an examination of facts the court shall appoint counsel or a solicitor to represent his interests.

(4) The court may, on the motion of the prosecutor and after hearing the accused, order that the examination of facts shall proceed in relation to a particular charge, or particular charges, in the indictment in priority to other such charges.

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(5) The court may, on the motion of the prosecutor and after hearing the accused, at any time desert the examination of facts pro loco et tempore as respects either the whole indictment or any charge therein.

(6) Where, and to the extent that, an examination of facts has, under subsection (5) above, been deserted pro loco et tempore, the Lord Advocate may, at any time, raise and insist in a new indictment notwithstanding any time limit which would otherwise apply in respect of prosecution of the alleged offence.

(7) If, in a case where a court has made a finding under subsection (2) of section 174ZA above, a person is subsequently charged, whether on indictment or on a complaint, with an offence arising out of the same act or omission as is referred to in subsection (1) of that section, any order made under section 174ZC(2) of this Act shall, with effect from the commencement of the later proceedings, cease to have effect.

(8) For the purposes of subsection (7) above, the later proceedings are commenced when the indictment or, as the case may be, the complaint is served.**]**

Textual Amendments

F259 S. 174ZB inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 49(1)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F260 174ZB Disposal of case where accused found to be insane.

(1) This section applies where—

(a) a person is, by virtue of section 174(2) or 174ZA(3) of this Act, acquitted on the ground of his insanity at the time of the act or omission; or

(b) following an examination of facts under section 174ZA, a court makes a finding under subsection (2) of that section.

(2) Subject to subsection (3) below, where this section applies the court may, as it thinks fit—

(a) make an order (which shall have the same effect as a hospital order) that the person be detained in such hospital as the court may specify;

(b) in addition to making an order under paragraph (a) above, make an order (which shall have the same effect as a restriction order) that the person shall, without limit of time, be subject to the special restrictions set out in section 62(1) of the Mental Health (Scotland) Act 1984;

(c) make an order (which shall have the same effect as a guardianship order) placing the person under the guardianship of a local authority or of a person approved by a local authority;

(d) make a supervision and treatment order (within the meaning of paragraph 1(1) of Schedule 5A to this Act); or

(e) make no order.

(3) Where the offence with which the person was charged is murder, the court shall make orders under both paragraphs (a) and (b) of subsection (2) above in respect of that person.

(4) Sections 175(1) and (3) to (6) and 176 to 178 of this Act shall have effect in relation to the making, terms and effect of an order under paragraph (a), (b) or (c) of subsection (2)

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above as those provisions have effect in relation to the making, terms and effect of, respectively, a hospital order, a restriction order and a guardianship order as respects a person convicted of an offence, other than an offence the sentence for which is fixed by law, punishable by imprisonment.**]**

Textual Amendments

F260 S. 174ZC inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 49(1)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F261 174ZA Appeal by accused in case involving insanity.

(1) A person may appeal to the High Court against—

(a) a finding made under section 174(1) of this Act that he is insane so that his trial cannot proceed or continue, or the refusal of the court to make such a finding;

(b) a finding under section 174ZA(2) of this Act; or

(c) an order made under section 174ZC(2) of this Act.

(2) An appeal under subsection (1) above shall be—

(a) in writing; and

(b) lodged—

(i) in the case of an appeal under paragraph (a) of that subsection, not later than seven days after the date of the finding or refusal which is the subject of the appeal;

(ii) in the case of an appeal under paragraph (b), or both paragraphs (b) and (c), of that subsection, not later than 28 days after the conclusion of the examination of facts;

(iii) in the case of an appeal under paragraph (c) of that subsection against an order made on an acquittal, by virtue of section 174(2) or 174ZA(3) of this Act, on the ground of insanity at the time of the act or omission, not later than 14 days after the date of the acquittal;

(iv) in the case of an appeal under that paragraph against an order made on a finding under section 174ZA(2), not later than 14 days after the conclusion of the examination of facts,

or within such longer period as the High Court may, on cause shown, allow.

(3) Subsections (1)(a) and (2)(b)(i) above are without prejudice to section 76A(1) of this Act.

(4) Where an appeal is taken under subsection (1) above, the period from the date on which the appeal was lodged until it is withdrawn or disposed of shall not count towards any time limit applying in respect of the case.

(5) An appellant in an appeal under this section shall be entitled to be present at the hearing of the appeal unless the High Court determines that his presence is not practicable or appropriate.

(6) In disposing of an appeal under subsection (1) above the High Court may—

(a) affirm the decision of the court of first instance;

(b) make any other finding or order which that court could have made at the time when it made the finding or order which is the subject of the appeal; or

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(c) remit the case to that court with such directions in the matter as the High Court thinks fit.

(7) Section 280 of this Act shall not apply in relation to any order as respects which a person has a right of appeal under subsection (1)(c) above.**]**

Textual Amendments

F261 S. 174ZD inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 51(1)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F262 174ZA Appeal by Lord Advocate in case involving insanity.

(1) The Lord Advocate may appeal to the High Court on a point of law against—

(a) a finding under subsection (1) of section 174 of this Act that an accused is insane so that his trial cannot proceed or continue;

(b) an acquittal on the ground of insanity at the time of the act or omission by virtue of subsection (2) of that section;

(c) an acquittal under section 174ZA(3) of this Act (whether or not on the ground of insanity at the time of the act or omission); or

(d) any order made under section 174ZC(2) of this Act.

(2) An appeal under subsection (1) above shall be—

(a) in writing; and

(b) lodged—

(i) in the case of an appeal under paragraph (a) or (b) of that subsection, not later than seven days after the finding or, as the case may be, the acquittal which is the subject of the appeal;

(ii) in the case of an appeal under paragraph (c) or (d) of that subsection, not later than seven days after the conclusion of the examination of facts,

or within such longer period as the High Court may, on cause shown, allow.

(3) Subsection (1)(a) and (2)(b)(i) above are without prejudice to section 76A(1) of this Act.

(4) A respondent in an appeal under this section shall be entitled to be present at the hearing of the appeal unless the High Court determines that his presence is not practicable or appropriate.

(5) In disposing of an appeal under subsection (1) above the High Court may—

(a) affirm the decision of the court of first instance;

(b) make any other finding or order which that court could have made at the time when it made the finding or order which is the subject of the appeal; or

(c) remit the case to that court with such directions in the matter as the High Court thinks fit.**]**

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Textual Amendments

F262 S. 174ZE inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 52(1)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F263 174A Interim hospital orders.

(1) Where a person is convicted in the High Court or the sheriff court of an offence punishable with imprisonment (other than an offence the sentence for which is fixed by law) and the court before or by which he is convicted is satisfied on the written or oral evidence of two medical practitioners (complying with the provisions of subsection (2) of this section and section 176 of this Act)—

(a) that the offender is suffering from mental disorder within the meaning of **[**F264 Section 1(2) of the M37 Mental Health (Scotland) Act 1984**]**; and

(b) that there is reason to suppose—

(i) that the mental disorder from which the offender is suffering is such that it may be appropriate for a hospital order to be made in his case; and

(ii) that, having regard to the provisions of section 175(4) of this Act, the hospital to be specified in any such hospital order may be a State hospital,

the court may, before making a hospital order or dealing with the offender in some other way, make an order (to be known as "an interim hospital order") authorising his admission to and detention in a State hospital or such other hospital as for special reasons the court may specify in the order:

Provided that where under any enactment the offender is remitted by the sheriff to the High Court for sentence the power to make an order under this subsection in relation to the offender shall be exercisable by the High Court.

(2) Of the medical practitioners whose evidence is taken into account under subsection (1) of this section at least one shall be employed at the hospital which is to be specified in the order.

(3) An interim hospital order shall not be made in respect of an offender unless the court is satisfied that the hospital which is to be specified in the order, in the event of such an order being made by the court, is available for his admission thereto within 28 days of the making of such an order.

(4) Where a court makes an interim hospital order it shall not make any other order for detention or impose a fine or pass sentence of imprisonment or make a probation order or a community service order in respect of the offence, but may make any other order which it has power to make apart from this section.

(5) The court by which an interim hospital order is made may include in the order such direction as it thinks fit for the conveyance of the offender to a place of safety and his detention therein pending his admission to the hospital within the period of 28 days referred to in subsection (3) of this section.

(6) An interim hospital order—

(a) shall be in force for such period, not exceeding 12 weeks, as the court may specify when making the order; but

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(b) may be renewed for further periods of not more than 28 days at a time if it appears to the court on the written or oral evidence of the responsible medical officer that the continuation of the order is warranted;

but no such order shall continue in force for more than 6 months in all and the court shall terminate the order if it makes a hospital order in respect of the offender or decides, after considering the written or oral evidence of the responsible medical officer, to deal with the offender in some other way.

(7) An interim hospital order may be renewed under subsection (6) of this section without the offender being brought before the court if he is represented by counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.

(8) If an offender absconds from a hospital in which he is detained in pursuance of an interim hospital order, or while being conveyed to or from such a hospital, he may be arrested without warrant by a constable and shall, after being arrested, be brought as soon as practicable before the court which made the order; and the court may thereupon terminate the order and deal with him in any way in which it could have dealt with him if no such order had been made.

(9) When an interim hospital order ceases to have effect in relation to an offender the court may deal with him in any way (other than by making a new interim hospital order) in which it could have dealt with him if no such order had been made.

(10) The power conferred on the court by the provisions of this section is without prejudice to the power of the court under section 180(1) of this Act to remand a person in order that an inquiry may be made into his physical or mental condition.**]**

Textual Amendments

F263 S. 174A inserted by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), **s. 34(a)** and Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **s. 126(2)(b)**

F264 Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), **Sch. 3 para. 25**

Marginal Citations

M37 1984 c. 36**(85).**

175 Power of court to order hospital admission or guardianship.

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

(a) the court is satisfied, on the written or oral evidence of two medical practitioners (complying with the provisions of section 176 of this Act) that **[**F265the grounds set out in section **[**F266 17(1)**]** or, as the case may be, the ground set out in section **[**F266 36(a)**]** of the **[**F266M38 Mental Health (Scotland) Act 1984**]** apply in relation to the offender**]**, and

(b) the court is of opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section,

the court may by order authorise his admission to and detention in such hospital as may be specified in the order or, as the case may be, place him under the guardianship

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of such local authority or of such other person approved by a local authority as may be so specified:

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

(2) Where it appears to the prosecutor in any court before which a person is charged with an offence that the person may be suffering from mental disorder, it shall be the duty of such prosecutor to bring before the court such evidence as may be available of the mental condition of that person.

(3) An order for the admission of a person to a hospital (in this Act, referred to as "a hospital order") shall not be made under this section in respect of an offender unless the court is satisfied that that hospital, in the event of such an order being made by the court, is available for his admission thereto within 28 days of the making of such an order.

(4) A State hospital shall not be specified in a hospital order in respect of the detention of a person unless the court is satisfied, on the evidence of the medical practitioners which is taken into account under paragraph (a) of subsection (1) of this section, that the offender, on account of his dangerous, violent or criminal propensities, requires treatment under conditions of special security, and cannot suitably be cared for in a hospital other than a State hospital.

(5) An order placing a person under the guardianship of a local authority or of any other person (in this Act referred to as "a guardianship order") shall not be made under this section unless the court is satisfied

[[F267](a) after taking into consideration the evidence of a mental health officer, that it is necessary in the interests of the welfare of the person that he should be placed under guardianship; and

(b)**]**

that that authority or prison is willing to receive that person into guardianship.

(6) A hospital order or guardianship order shall specify the form of mental disorder, being mental illness or mental **[**[F268]handicap**]** or both, from which, upon the evidence taken into account under paragraph (a) of subsection (1) of this section, the offender is found by the court to be suffering; and no such order shall be made unless the offender is described by each of the practitioners, whose evidence is taken into account as aforesaid, as suffering from the same form of mental disorder, whether or not he is also described by either of them as suffering from the other form.

(7) Where an order is made under this section, the court shall not pass sentence of imprisonment or impose a fine or make a probation order **[**[F269]or a community service order**]** in respect of the offence, but may make any other order which the court has power to make apart from this section; and for the purposes of this subsection "sentence of imprisonment" includes any sentence or order for detention.

Textual Amendments

F265 Words substituted by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), **Sch. 2 para. 31(a)** and Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **s. 126(2)(b)**;)

F266 Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), **Sch. 3 para. 26**

Changes to legislation: *Criminal Procedure (Scotland) Act 1975, Procedure prior to Trial is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F267 Words inserted by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), **Sch. 2 para. 31(b)** and Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **s. 126(2)(b)**

F268 Word substituted by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), **Sch. 2 para. 31(c)** and Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **s. 126(2)(b)**

F269 Words inserted by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), **Sch. 2 para. 31(d)** and Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **s. 126(2)(b)**

Modifications etc. (not altering text)

C9 S. 175 extended by Contempt of Court Act 1981 (c. 49, SIF 39:3), **s. 15(3)**

Marginal Citations

M38 1984 c. 36**(85).**

176 Requirements as to medical evidence.

(1) Of the medical practitioners whose evidence is taken into account under **[**F270sections **[**F271174(1),**]**174A(1) and**]** 175(1)(a) of this Act, at least one shall be a practitioner approved for the purposes of **[**F272section 20 or section 39 of the M39Mental Health (Scotland) Act 1984**]** by a Health Board as having special experience in the diagnosis or treatment of mental disorder.

[F273(1A) Written or oral evidence given for the purposes of the said section 175(1)(a) shall include a statement as to whether the person giving the evidence is related to the accused and of any pecuniary interest which that person may have in the admission of the accused to hospital or his reception into guardianship.**]**

(2) For the purposes of the said **[**F274sections 174(1) and**]**175(1)(a) a report in writing purporting to be signed by a medical practitioner may, subject to the provisions of this section, be received in evidence without proof of the signature or qualifications of the practitioner; but the court may, in any case, require that the practitioner by whom such a report was signed be called to give oral evidence.

(3) Where any such report as aforesaid is tendered in evidence, otherwise than by or on behalf of the accused, then—

(a) if the accused is represented by counsel or solicitor, a copy of the report shall be given to his counsel or solicitor;

(b) if the accused is not so represented, the substance of the report shall be disclosed to the accused or, where he is a child under 16 years of age, to his parent or guardian if present in court;

(c) in any case, the accused may require that the practitioner by whom the report was signed be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by or on behalf of the accused;

and where the court is of opinion that further time is necessary in the interests of the accused for consideration of that report, or the substance of any such report, it shall adjourn the case.

(4) For the purpose of calling evidence to rebut the evidence contained in any such report as aforesaid, arrangements may be made by or on behalf of an accused person detained in a hospital **[**F275or, as respects a report for the purposes of section 174(1), remanded in custody**]** for his examination by any medical practitioner, and any such examination may be made in private.

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Textual Amendments

F270 Word substituted by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), **Sch. 2 para. 32** and Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **s. 126(2)(b)**

F271 Words in s. 176(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 66(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F272 Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), **Sch. 3 para. 27**

F273 S. 176(1A) inserted by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), s. 127(1), **Sch. 3 para. 27** and Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **s. 126(2)(b)**

F274 Word in s. 176(2) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 66(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F275 Words in s. 176(4) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 66(c)**; S.I. 1996/517, arts. 3(a), 4-6, **Sch. 2**

Modifications etc. (not altering text)

C10 S. 176 extended by Contempt of Court Act 1981 (c. 49, SIF 39:3), **s. 15(3)**

Marginal Citations

M39 1984 c. 36**(85).**

177 Supplementary provisions as to hospital orders.

The court by which a hospital order is made may give such directions as it thinks fit for the conveyance of the patient to a place of safety and his detention therein pending his admission to the hospital within the period of 28 days referred to in section 175(3) of this Act; but a direction for the conveyance of a patient to a residential establishment provided by a local authority under Part IV of the [M40]Social Work (Scotland) Act 1968 shall not be given unless the court is satisfied that that authority is willing to receive the patient therein.

Modifications etc. (not altering text)

C11 S. 177 extended by Contempt of Court Act 1981 (c. 49, SIF 39:3), **s. 15(3)**

Marginal Citations

M40 1968 c. 49**(81:3).**

178 Power of court to restrict discharge from hospital.

(1) Where a hospital order is made in respect of a person, and it appears to the court, having regard to the nature of the offence with which he is charged, the antecedents of the person and the risk that as a result of his mental disorder he would commit offences if set at large, that it is necessary for the protection of the public **[**[F276]from serious harm**]** so to do, the court may, subject to the provisions of this section, further order that the person shall be subject to the special restrictions set out in **[**[F277]section 62(1) of the [M41]Mental Health (Scotland) Act 1984**]**, [F278]. . . without limit of time [F278]. . ..

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(2) An order under this section (in this Act referred to as **[**F279"a restriction order"**]** shall not be made in the case of any person unless the medical practitioner approved by the Health Board for the purposes of **[**F280section 20 or section 39 of the M42Mental Health (Scotland) Act 1984**]**, whose evidence is taken into account by the court under section 175(1)(a) of this Act, has given evidence orally before the court.

(3) Where **[**F281a restriction order is in force in respect of a patient**]**, a guardianship order shall not be made in respect of him; and where the hospital order relating to him ceases to have effect by virtue of **[**F282section 60(3)**]**of the M43Mental Health (Scotland) Act 1984 on the making of another hospital order, that order shall have the same effect in relation to **[**F283the restriction order**]** as the previous hospital order, but without prejudice to the power of the court making that other hospital order to make **[**F284another restriction order**]** to have effect on the expiration of the previous such order.

Textual Amendments

F276 Words inserted by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), **s. 22(2)** and Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **s. 126(2)(b)**

F277 Words inserted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), **Sch. 3 para. 28(a)**

F278 Words in s. 178(1) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, ss. 54, 117(2), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F279 Words substituted by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), **Sch. 2 para. 33(a)** and Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **s. 126(2)(b)**

F280 Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), **Sch. 3 para. 28(b)**

F281 Words substituted by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), **Sch. 2 para. 33(b)(i)**

F282 WOrds in s. 178(3) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 67**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F283 Words substituted by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), **Sch. 2 para. 33(b)(ii)** and Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **s. 126(2)(b)**

F284 Words substituted by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), **Sch. 2 para. 33(b)(iii)** and Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **s. 126(2)(b)**

Modifications etc. (not altering text)

C12 S. 178 extended by Contempt of Court Act 1981 (c. 49, SIF 39:3), **s. 15(3)**

C13 S. 178(3) extended by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **s. 76**

Marginal Citations

M41 1984 c. 36**(85).**

M42 1984 c. 36**(85).**

M43 1984 c. 36**(85).**

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Adjournment and remand

179 Power of court to adjourn a case before sentence.

(1) 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: **[**F285and where the court **[**F286adjourns the case solely for that purpose**]** it shall remand the accused in custody or on bail**][**F287or ordain him to appear at the adjourned diet**]**:

Provided that a court shall not **[**F288solely**]**for the purpose aforesaid adjourn the hearing of a case for any single period exceeding

[F289(a) where the accused is remanded in custody, three weeks; or

(b) where he is remanded on bail or is ordained to appear, eight weeks but only on cause shown and otherwise four weeks**]**

[F290(2) An accused who is remanded under this section may appeal against the refusal of bail or against the conditions imposed within 24 hours of his remand, by note-of-appeal presented to the High Court, either in court or in chambers, may, after hearing parties—

[F291(a) review the order appealed against and either grant bail on such conditions as it thinks fit or ordain the accused to appear at the adjourned diet;**]**

(b) confirm the order.**]**

Textual Amendments

F285 Words inserted by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **s. 5(a)**

F286 Words in s. 179(1) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 68(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F287 Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 36(a)**

F288 Word in s. 179(1) proviso inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 68(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F289 Words in the proviso in s. 179(1) substituted (18.9.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(6)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(3), 4(1)(c), **Sch. 2**

F290 S. 179(2) added by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **s. 5(b)**

F291 S. 179(2)(a) substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 36(b)**

[F292179A Offence committed by person under supervision etc.: provision of local authority report.

Where a person specified in section 27(1)(b)(i) to (vi) of the Social Work (Scotland) Act 1968 commits an offence, the court shall not dispose of the case without obtaining from the local authority in whose area the person resides a report as to—

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(a) the circumstances of the offence; and

(b) the character of the offender, including his behaviour while under the supervision, or as the case may be subject to the order, so specified in relation to him.**]**

Textual Amendments

F292 S. 179A inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 37**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

180 Remand for inquiry into physical or mental condition.

(1) Without prejudice to any powers exercisable by a court under the last foregoing section, where a person is charged before a court with an offence punishable with imprisonment, and the court is satisfied that he did the act or made the omission charged but is of opinion that an inquiry ought to be made into his physical or mental condition before the method of dealing with him is determined, the court **[**[F293]shall—

(a) for the purpose of inquiry solely into his physical condition, remand him in custody or on bail;

(b) for the purpose of inquiry into his mental condition (whether or not in addition to his physical condition), remand him in custody or on bail or, where the court is satisfied—

(i) on the written or oral evidence of a medical practitioner, that the person appears to be suffering from a mental disorder; and

(ii) that a hospital is available for his admission and suitable for his detention,

make an order committing him to that hospital,

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.

[[F294](1A) Where the court is of the opinion that a person ought to continue to be committed to hospital for the purpose of inquiry into his mental condition following the expiry of the period specified in an order for committal to hospital under paragraph (b) of subsection (1) above, the court may—

(a) if the condition in sub-paragraph (i) of that paragraph continues to be satisfied and a suitable hospital is available for his continued detention, renew the order for such further period not exceeding three weeks as the court thinks necessary to enable a medical examination and report to be made; and

(b) in any other case, remand the person in custody or on bail in accordance with subsection (1) above.

(1B) An order under subsection (1A)(a) above may, unless objection is made by or on behalf of the person to whom it relates, be made in his absence.

(1C) Where, before the expiry of the period specified in an order for committal to hospital under subsection (1)(b) above, the court considers, on an application made to it, that committal to hospital is no longer required in relation to the person, the court shall revoke the order and may make such other order, under subsection (1)(a) above or any other provision of this Part of this Act, as the court considers appropriate.**]**

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(2) Where a person is remanded on bail under this section, . . . [F295] it shall be a condition of the **[**[F296]order granting bail**]** that he shall—

(a) undergo a medical examination by a duly qualified medical practitioner or, where the inquiry is into his mental condition and the **[**[F296]order granting bail**]** so specifies, two such practitioners; and

(b) for the purpose attend at an institution or place, or on any such practitioner specified in the **[**[F296]order granting bail**]** and, where the inquiry is into his mental condition, comply with any directions which may be given to him for the said purpose by any person so specified or by a person of any class so specified;

and, if arrangements have been made for his reception, it may be a condition of the **[**[F296]order granting bail**]** that the person shall, for the purpose of the examination, reside in an institution or place specified as aforesaid, not being an institution or place to which he could have been remanded in custody, until the expiry of such period as may be so specified or until he is discharged therefrom, whichever first occurs.

(3) . . . . . [F297]

(4) On exercising the powers conferred by this section **[**[F298]to remand in custody or on bail**]**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.

[[F299](4A) On making an order of committal to hospital under subsection (1)(b) above the court shall send to the hospital specified in the order a statement of the reasons for which the court is of the opinion that an inquiry ought to be made into the mental condition of the person to whom it relates, and of any information before the court about his mental condition.**]**

[[F300](5) A person remanded under this section may appeal against the refusal of bail or against the conditions imposed **[**[F301], and a person committed to hospital under this section may appeal against the order of committal,**]**within 24 hours of his remand **[**[F302]or, as the case may be, committal**]**, by note of appeal presented to the High Court, and the High Court, either in court or in chambers, may after hearing parties—

(a) review the order and grant bail on such conditions as it thinks fit; or

(b) confirm the order; **]**

[[F303]or

(c) in the case of an appeal against an order of committal to hospital, revoke the order and remand the person in custody.**]**

[[F304](6) The court may, on cause shown, vary an order for committal to hospital under subsection (1)(b) above by substituting another hospital for the hospital specified in the order.

(7) Subsection (1)(b) above shall apply to the variation of an order under subsection (6) above as it applies to the making of an order for committal to hospital.**]**

***Changes to legislation:** Criminal Procedure (Scotland) Act 1975, Procedure prior to Trial is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F293 S. 180(1)(a)(b) and word substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) for words by 1995 c. 20, **s. 55(2)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F294 S. 180(1A)-(1C) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 55(3)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F295 Words repealed by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 2**

F296 Words substituted by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 1 para. 5**

F297 S. 180(3) repealed by Bail etc. (Scotland) Act 1980 (c. 4), **Sch. 2**

F298 Words in s. 180(4) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 55(4)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F299 S. 180(4A) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 55(5)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F300 S. 180(5) added by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **s. 6(b)**

F301 Words in s. 180(5) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 55(6)(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F302 Words in s. 180(5) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 55(6)(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F303 S. 180(5)(c) and word "or" immediately preceding it inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 55(6)(c)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F304 S. 180(6)(7) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 55(7)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Admonition and discharge

181 Admonition.

A court may, if it appears to meet the justice of the case, dismiss with an admonition any person **[**F305convicted**]** by the court of any offence.

Textual Amendments

F305 Words in s. 181 substituted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(2)**

182 Absolute discharge.

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

Modifications etc. (not altering text)

C14 S. 182 amended by Licensed Premises (Exclusion of Certain Persons) Act 1980 (c. 32, SIF 68A:1, 2), **s. 1(2)(c)**

***Changes to legislation:** Criminal Procedure (Scotland) Act 1975, Procedure prior to Trial is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[F306 Caution]

Textual Amendments

F306 S. 182A and cross-heading inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 69**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

182A [F307 Caution.]

Where a person is convicted of an offence (other than an offence the sentence for which is fixed by law) the court may, instead of or in addition to imposing a fine or a period of imprisonment, ordain the accused to find caution for good behaviour for a period not exceeding 12 months and to such amount as the court considers appropriate.

Textual Amendments

F307 S. 182A inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 69**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Probation

183 Probation.

(1) **[**F308Subject to subsection (1A) below,**]** where a person is convicted of an offence (other than an offence the sentence for which is fixed by law), the court, if it is of opinion having regard to the circumstances, including the nature of the offence and the character of the offender **[**F309and having obtained a report as to the circumstances and character of the offender**]**, that it is expedient to do so, may instead of sentencing him make a probation order, that is to say an order requiring the offender to be under supervision for a period to be specified in the order of not less than **[**F310six months**]** nor more than three years.

[F311(1A) A court shall not make a probation order under subsection (1) above unless it is satisfied that suitable arrangements for the supervision of the offender can be made

[F312(a) in a case other than that mentioned in paragraph (b) below, by the local authority in whose area he resides or is to reside; or

(b) in a case where, by virtue of section 188(1) of this Act, subsection (2) of this section would not apply, by the probation committee for the area which contains the petty sessions area which would be named in the order**]**

.**]**

(2) A probation order shall be as nearly as may be in the form prescribed by Act of Adjournal, and shall name the local authority area in which the offender resides or is to reside and the order shall make provision for the offender to be under the supervision of an officer of the local authority of that area, or, where the offender resides or is to reside in a local authority area in which the court has no jurisdiction the court shall name the appropriate court (being such a court as could have been named in any amendment of the order in accordance with the provisions of Schedule 5 to this Act) in the area of residence or intended residence, and the court last mentioned shall require the local

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authority for that area to arrange for the offender to be under the supervision of an officer of that authority.

(3) Subject to the provisions of Schedule 5 to this Act relating to probationers who change their residence, an offender in respect of whom a probation order is made shall be required to be under the supervision of an officer of the local authority as aforesaid.

(4) Subject to the provisions of the next following section, a probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements as the court, having regard to the circumstances of the case, considers

[F313(a)**]** **[**F314conducive to**]** securing the good conduct of the offender or **[**F315to**]** preventing a repetition by him of the offence or the commission of other offences; **[**F316or

(b) where the probation order is to include such a requirement as is mentioned in subsection (5A) **[**F317or (5B)**]** below, conducive to securing or preventing the aforesaid matters.**]**

(5) Without prejudice to the generality of the last foregoing subsection, a probation order may include requirements relating to the residence of the offender:

Provided that—

(a) before making an order containing any such requirements, the court shall consider the home surroundings of the offender; and

(b) where the order requires the offender to reside in any institution or place, the name of the institution or place and the period for which he is so required to reside shall be specified in the order, and that period shall not extend beyond 12 months from the date of the requirement or beyond the date when the order expires.

[F318(5A) Without prejudice to the generality of subsection (4) above, where **[**F319an offender has been convicted of an offence punishable by imprisonment and**]**a court which is considering making a probation order—

(a) is satisfied that the offender is of or over 16 years of age and has committed F320. . .that the conditions for the making of a community service order under the M44Community Service by Offenders (Scotland) Act 1978 specified in paragraphs (a) and (c) of section 1(2) of that Act have been met;

(b) has been notified by the Secretary of State that arrangements exist for persons who reside in the locality where the offender resides, or will be residing when the probation order comes into force, to perform unpaid work as a requirement of a probation order; and

(c) is satisfied that provision can be made under the arrangements mentioned in paragraph (b) above for the offender to perform unpaid work under the probation order,

it may include in the probation order, in addition to any other requirement, a requirement that the offender shall perform unpaid work for such number of hours (being in total not less than forty nor more than two hundred and farty) as may be specified in the probation order; and the M45said Act of 1978 shall apply to a probation order including such a requirement as it applies to a community service order, but as if—

(i) subsections (1), (2)(b) and (d) and (4)(b) of section 1 and sections 4 **[**F321, 6 and 6A**]** were omitted;

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(ii) in section 1(5) for the words "subsection (1) above" there were substituted the words "subsection (5A) of section 183 or, as the case may be, 384 of the 1975 Act"; and

(iii) any other necessary modifications were made.**]**

[F322(5B) Without prejudice to the generality of subsection (4) above, where a court is considering making a probation order it may include in the probation order, in addition to any other requirement, a requirement that the offender shall pay compensation either in a lump sum or by instalments for any personal injury, loss or damage caused (whether directly or indirectly) by the acts which constituted the offence; and the following provisions of the Criminal Justice (Scotland) Act 1980 shall apply to such a requirement as if any reference in them to a compensation order included a reference to a requirement to pay compensation under this subsection—

section 58(2) and (3);

section 59 (except the proviso to subsection (1) and subsection (2));

section 60;

section 62;

section 64 (except paragraph (a));

section 67.

(5C) Where the court imposes a requirement to pay compensation under subsection (5B) above—

(a) it shall be a condition of a probation order containing such a requirment that payment of the compensation shall be completed not more than eighteen months after the making of the order or not later than two months before the end of the period of probation whichever first occurs;

(b) the court, on the application of the offender or the officer of the local authority responsible for supervising the offender, may vary the terms of the requirement, including the amount of any instalments, in consequence of any change which may have occurred in the circumstances of the offender; and

(c) in any proceedings for breach of a probation order where the breach consists only in the failure to comply with a requirement to pay compensation, a document purporting to be a certificate signed by the clerk of the court for the time being having jurisdiction in relation to the order that the compensation or, where payment by instalments has been allowed, any instalment has not been paid shall be sufficient evidence of such breach.**]**

(6) Before making a probation order, the court shall explain to the offender in ordinary language the effect of the order (including any additional requirements proposed to be inserted therein under subsection (4) **[**F323or (5)(5A), (5B) or (5C)**]** of this section or under the next following section) and that if he fails to comply therewith or commits another offence during the probation period he will be liable to be sentenced for the original offence and the court shall not make the order unless the offender expresses his willingness to comply with the requirements thereof.

(7) The clerk of the court by which a probation order is made or of the appropriate court, as the case may be, shall

[F324(a)**]** cause copies thereof to be given to the officer of the local authority who is to supervise the probationer F325. . . and to the person in charge of any institution or place in which the probationer is required to reside under the probation order. **[**F326; and

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(b) cause a copy thereof to be given to the probationer or sent to him by registered post or by the recorded delivery service; and an acknowledgement or certificate of delivery of a letter containing such copy order issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgement or certificate.**]**

Textual Amendments

F308 Words in s. 183(1) inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), **s. 61(1)(a)**; S.I. 1991/850, art. 3, **Sch.**

F309 Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 10(a)**

F310 Words substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 10(b)**

F311 S. 183(1A) inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), **s. 61(1)(b)**; S.I. 1991/850, art. 3, **Sch.**

F312 S. 183(1A)(a)(b) substituted (1.10.1992) for certain words by Criminal Justice Act 1991 (c. 53), s. 16, **Sch. 3** , Pt. II para. 7(2) (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.

F313 Word inserted by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), **s. 7(a)**

F314 Words in s. 183(4)(a) substituted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), **s. 61(1)(c)(i)**; S.I. 1991/850, art. 3, **Sch.**

F315 Word in s. 183(4)(a) substituted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), **s. 61(1)(c)(ii)**; S.I. 1991/850, art. 3, **Sch.**

F316 Words added by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), **s. 7(a)**

F317 Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a)**, 65(3)

F318 S. 183(5A) inserted by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), **s. 7(b)**

F319 Words in s. 183(5A) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 38(1)(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F320 Words in s. 183(5A)(a) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, ss. 38(1)(b), 117(2), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F321 Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 68(2), **Sch. 13 Pt. II para. 3**

F322 S. 183(5B)(5C) inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a)**, 65(1)(2)(a)

F323 Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), **s.7(c)** (substituting "(5) or (5A)" for "or (5)" is repealed by virtue of the Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(2), **Sch. 2** and for "or (5A)" there is substituted "(5A), (5B) or (5C)" by virtue of the Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a)**, 65(4)

F324 S. 183(7): word "(a)" inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 70(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F325 Words in s. 183(a) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 70(b), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F326 S. 183(b) and the word "and" immediately preceding it inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 70(c)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Modifications etc. (not altering text)

C15 S. 183 amended by Licensed Premises (Exclusion of Certain Persons) Act 1980 (c. 32, SIF 68A:1, 2), **s. 1(2)(c)**

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Marginal Citations

M44 1978 c. 49**(39:1).**

M45 1978 c. 49**(39:1).**

184 Probation orders requiring treatment for mental condition.

(1) Where the court is satisfied, on the evidence of a registered medical practitioner approved for the purposes of **[**F327section 20 or 39 of the M46Mental Health (Scotland) Act 1984**]**, that the mental condition of an offender is such as requires and may be susceptible to treatment but is not such as to warrant his detention in pursuance of a hospital order under **[**F327Part VI of that Act**]**, or under this Act, the court may, if it makes a probation order, include therein a requirement that the offender shall submit, for such period not extending beyond 12 months from the date of the requirement as may be specified therein, to treatment by or under the direction of a registered medical practitioner **[**F328or chartered psychologist**]**with a view to the improvement of the offender's mental condition.

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

(a) treatment as a resident patient in a hospital within the meaning of the **[**F329M47Mental Health (Scotland) Act 1984**]**, not being a State hospital within the meaning of the Act;

(b) treatment as a non-resident patient at such institution or place as may be specified in the order; or

(c) treatment by or under the direction of such registered medical practitioner **[**F330or chartered psychologist**]**as may be specified in the order;

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

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

(4) F331

[F332(5) Where the medical practitioner **[**F330or chartered psychologist**]**by whom or under whose direction a probationer is receiving any of the kinds of treatment to which he is required to submit in pursuance of a probation order is of opinion—

(a) that the probationer requires, or that it would be more appropriate for him to receive, a different kind of treatment (whether in whole or in part) from that which he has been receiving, being treatment of a kind which subject to subsection (5A) of this section could have been specified in the probation order; or

(b) that the treatment (whether in whole or in part) can be more appropriately given in or at a different institution or place from that where he has been receiving treatment in pursuance of the probation order,

he may, subject to subsection (5B) of this section, make arrangements for the probationer to be treated accordingly.

(5A) Arrangements made under subsection (5) of this section may provide for the probationer to receive his treatment (in whole or in part) as a resident patient in an

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institution or place notwithstanding that it is not one which could have been specified in that behalf in the probation order.

(5B) Arrangements shall not be made under subsection (5) of this section unless—

(a) the probationer and any officer responsible for his supervision agree;

(b) the treatment will be given by or under the direction of a registered medical practitioner **[**F330or chartered psychologist**]**who has agreed to accept the probationer as his patient; and

(c) where such treatment entails the probationer's being a resident patient, he will be received as such.**]**

(6) Where any such arrangements as are mentioned in **[**F333subsection (5) of this section**]** are made for the treatment of a probationer—

(a) the **[**F334any officer responsible for the probationer's supervision shall notify the appropriate court of the arrangements;**]** and

(b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the probation order.

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

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

Textual Amendments

F327 Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), **Sch. 3 para. 29(a)**

F328 Words in s. 184(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 39(1)(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F329 Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), **Sch. 3 para. 29(b)**

F330 Words in s. 184(2)(c)(5)(5B)(b) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 39(1)(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F331 S. 184(4) repealed by Mental Health (Amendment) (Scotland) Act 1983 (c. 39, SIF 85), **Sch. 3**

F332 S. 184(5)(5A)(5B) substituted for s. 184(5) by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), **s. 36(2)** and Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **s. 126(2)(b)**

F333 Words substituted by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), **s. 36(3)(a)** and Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **s. 126(2)(b)**

F334 Words substituted by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), **s. 36(3)(b)** and Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **s. 126(2)(b)**

Marginal Citations

M46 1984 c. 36**(85).**

M47 1984 c. 36**(85).**

185 Discharge and amendment of probation orders.

(1) The provisions of Schedule 5 to this Act shall have effect in relation to the discharge and amendment of probation orders.

(2) Where, under section 186 of this Act, a probationer is sentenced for the offence for which he was placed on probation, the probation order shall cease to have effect.

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186 Failure to comply with requirement of probation order.

(1) If, on information [F335]. . . from

[[F336](a)**]** the officer supervising the probationer,

[[F337](b) the director of social work of the local authority whose officer is supervising the probationer; or

(c) an officer appointed by the director of social work to act on his behalf for the purposes of this subsection,**]**

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) **[**[F338]except in the case of a failure to comply with a requirement to pay compensation and**]** without prejudice to the continuance in force of the probation order, impose a fine not exceeding **[**[F339]level 3 on the standard scale**]**; or

[[F340](b) sentence the offender for the offence for which the order was made;**]**

(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 **[**[F341]; or

(d) without prejudice to the continuance in force of the probation order, in a case where the conditions required by the [M48]Community Service by Offenders (Scotland) Act 1978 are satisfied, make a community service order, and the provisions of that Act shall apply to such an order as if the failure to comply with the requirement of the probation order were the offence in respect of which the order had been made.**]**

[[F342](2A) for the purposes of subsection (2) above, evidence of one witness shall be sufficient evidence.**]**

(3) A fine imposed under this section in respect of a failure to comply with the requirements of a probation order shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by or in respect of a conviction or a penalty imposed on a person summarily convicted.

(4) A probationer who is required by a probation order to submit to treatment for his mental condition shall not be deemed for the purpose of this section to have failed to comply with that requirement on the ground only that he has refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances.

(5) Without prejudice to the provisions of section 187 of this Act, a probationer who is convicted of an offence committed during the probation period shall not on that account be liable to be dealt with under this section for failing to comply with any requirement of the probation order.

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Textual Amendments

F335 Words in s. 186(1) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 71, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F336 S. 186(1) "(a)" inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), **s. 61(2)(a)**: S.I. 1991/850, art. 3, **Sch.**

F337 S. 186(1)(b)(c) inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), **s. 61(2)(b)**; S.I. 1991/850, art. 3, **Sch.**

F338 Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a)**, 65(5)

F339 Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 56, **Sch. 7**

F340 S. 186(2)(b) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 38(2)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F341 Word and s. 186(2)(d) added by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), **s. 8**

F342 S. 186(2A) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(7)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 4(1)(c)

Marginal Citations

M48 1978 c. 49**(39:1).**

187 Commission of further offence.

(1) If it appears to the court by which a probation order has been made (or to the appropriate court) that the probationer to whom the order relates has been convicted by a court in any part of Great Britain of an offence committed during the probation period and has been dealt with for that offence, the first-mentioned court (or the appropriate court) may issue a warrant for the arrest of the probationer, or may, if it thinks fit, instead of issuing 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 on his appearance or on his being brought before the court, the court may, if it thinks fit, deal with him under section 186(2)(b) of this Act.

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

[F343(3) Where—

(a) a court has, under section 183(5A) of this Act, included in a probation order a requirement that an offender shall perform unpaid work; and

(b) the offender is convicted of an offence committed in the circumstances mentioned in subsection (4) below,

the court which sentences him for the offence shall, in determining the appropriate sentence for that offence, have regard to the fact that the offence was committed in those circumstances.

(4) The circumstances referred to in subsection (3) above are that the offence was committed—

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(a) during the period that the offender was subject to a requirement to perform unpaid work or within the period of three months following the expiry of that period; and

(b) in any place where the unpaid work was being or had previously been performed.

(5) The court shall not, under subsection (3) above, have regard to the fact that the offence was committed in the circumstances mentioned in subsection (4) above unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.**]**

Textual Amendments

F343 S. 187(3)-(5) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 40(1)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

188 Probation orders relating to persons residing in England.

(1) Where the court by which a probation order is made under section 183 of this Act **[**F344(not being a probation order including a requirement **[**F345which, while corresponding to a requirement mentioned in paragraph 2 or 3 of Schedule 1A to the M49Powers of Criminal Courts Act 1973, would if included in a probation order made under that Act fail to accord with a restriction as to days of presentation, participation or attendance mentioned in paragraph 2(4)(a) or (6)(a), or as the case may be 3(3)(a), of that Schedule**]**)**]** is satisfied that the offender has attained the age of **[**F346**]**16years and resides or will reside in England, subsection (2) of the said section shall not apply to the order, but the order shall contain a requirement that he be under the supervision of a probation officer appointed for or assigned to the petty sessions area in which the offender resides or will reside; F347. . . that area shall be named in the order **[**F348; and where the order includes a requirement that the probationer perform unpaid work for a number of hours, the number specified shall not exceed one hundred.**]**.

(2) Where a probation order has been made under section 183 of this Act and the court in Scotland by which the order was made or the appropriate court is satisfied

[F349(a) that the probationer has attained the age of 16 years;

(b) that he proposes to reside, or is residing, in England; and

(c) that suitable arrangements for his supervision can be made by the probation committee for the area which contains the petty sessions area in which he resides or will reside**]**

, the power of that court to amend the order under Schedule 5 to this Act shall include power to insert the provisions required by subsection (1) of this section **[**F350or to vary any requirement for performance of unpaid work so that such hours as remain to be worked do not exceed one hundred**]**; and the court may so amend the order without summoning the probationer and without his consent.

(3) A probation order made or amended by virtue of this section may, notwithstanding section 184(8) of this Act, include a requirement that the probationer shall submit to treatment for his mental condition and—

(a) subsections (1), (3) and (7) of the said section 184 and **[**F351paragraph 5(3) of Schedule 1A to**]** the M49Powers of Criminal Courts Act 1973 (all of which regulate the making of probation orders which include any such requirement) shall apply to the making of an order which includes any such requirement by virtue of this subsection as they apply to the making of an order which includes

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any such requirement by virtue of section 184 of this Act and **[**[F351]paragraph 5 of Schedule 1A to**]** the said Act of 1973 respectively; and

(b) **[**[F352]sub-paragraphs (5) to (7) of paragraph 5 of Schedule 1A to**]** the said Act of 1973 (functions of supervising officer and medical practitioner where such a requirement has been imposed) shall apply in relation to a probationer who is undergoing treatment in England in pursuance of a requirement imposed by virtue of this subsection as they apply in relation to a probationer undergoing such treatment in pursuance of a requirement imposed by virtue of that section.

(4) Sections 185(1) and 186(1) of this Act shall not apply to any order made or amended under this section; but subject as hereinafter provided the provisions of

[[F353]Schedule 2 to the Criminal Justice Act 1991 shall apply to the order—

(a) except in the case mentioned in paragraph (b) below, as if that order were a probation order made under section 2 of the Powers of Criminal Courts Act 1973; and

(b) in the case of an order which contains a requirement such as is mentioned in subsection (5A) of section 183 or 384 of this Act, as if it were a combination order made under section 11 of the said Act of 1991:

Provided that Part III of that Schedule shall not so apply; and sub-paragraphs (3) and (4) of paragraph 3 of that Schedule shall so apply as if for the first reference in the said sub-paragraph (3) to the Crown Court there were substituted a reference to a court in Scotland and for the other references in those sub-paragraphs to the Crown Court there were substituted references to the court in Scotland.**]**

(5) If it appears on information to a justice acting for the petty sessions area **[**[F354]named in a probation order made or amended under this section that the person to whom the order relates**]** has been convicted by a court in any part of Great Britain of an offence committed during the period specified in the order, he may issue a summons requiring that person to appear, at the place and time specified therein, before the court in Scotland by which the probation order was made or, if the information is in writing and on oath, may issue a warrant for his arrest, directing that person to be brought before the last-mentioned court.

(6) If a warrant for the arrest of a probationer issued under section 187 of this Act by a court is executed in England, and the probationer cannot forthwith be brought before that court, the warrant shall have effect as if it directed him to be brought before a magistrates' court for the place where he is arrested; and the magistrates' court shall commit him to custody or release him on bail (with or without sureties) until he can be brought or appear before the court in Scotland.

(7) The court by which a probation order is made or amended in accordance with the provisions of this section shall send three copies of the order to the clerk to the justices for the petty sessions area named therein, together with such documents and information relating to the case as it considers likely to be of assistance to the court acting for that petty sessions area.

(8) Where a probation order which is amended under subsection (2) of this section is an order to which the provisions of this Act apply by virtue of section 10 of the [M49]Powers of Criminal Courts Act 1973 (which relates to probation orders under that Act relating to persons residing in Scotland) then, notwithstanding anything in that section or this section, the order shall, as from the date of the amendment, have effect in all respects as if it were an order made under section 2 of that Act in the case of a person residing in England.

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Extent Information

E1 S. 188(3)-(8) extends also to England and Wales see s. 463(1)(a)

Textual Amendments

F344 Words inserted by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), **Sch. 2 para. 2**

F345 Words in s. 188(1) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53), s. 16, **Sch. 3**, Pt. II para. 7(3)(a)(i)(with s. 28); S.I. 1992/333, art. 2(2), **Sch.2**.

F346 Word in s. 188(1) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53), s. 16, **Sch. 3**, Pt. II para. 7(3)(a)(ii)(with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.

F347 Word in s. 188(1) ceased to have effect (1.10.1992) by virtue of Criminal Justice Act 1991 (c. 53), s. 16, **Sch. 3**, Pt. II para. 7(3)(a)(iii) (with s. 28); S.I. 1992/333, art. 2(2), **Sch.2**.

F348 Words in s. 188(1) added (1.10.1992) by Criminal Justice Act 1991 (c. 53), s. 16, **Sch. 3**, Pt. II para. 7(3)(a)(iv) (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.

F349 S. 188(2)(a)(b)(c) substituted (1.10.1992) for certain words by Criminal Justice Act 1991 (c. 53), s. 16, **Sch. 3** , Pt. II para. 7(3)(b)(i) (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.

F350 Words in s. 188(2) inserted (1.10.1992) by Criminal Justice Act 1991 (c. 53), s. 16, **Sch. 3** , Pt. II para. 7(3)(b)(ii) (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.

F351 Words in s. 188(3)(a) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53), s. 16, **Sch. 3**, Pt. II para. 7(3)(c)(i) (with s. 28); S.I. 1992/333, art. 2(2), **Sch.2**.

F352 Words in s. 188(3)(b) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53), s. 16, **Sch. 3**, Pt. II para. 7(3)(c)(ii) (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.

F353 S. 188(4)(a)(b) and proviso substituted (1.10.1992) for certain words by Criminal Justice Act 1991 (c. 53), s. 16, **Sch. 3**, Pt. II para. 7(3)(d) (with s. 28); S.I. 1992/333, art. 2(2), **Sch.2**.

F354 Words in s. 188(5) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53), s. 16, **Sch. 3**, Pt. II para. 7(3)(e) (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.

Marginal Citations

M49 1973 c. 62**(39:1).**

F355 189 . . . . . .

Textual Amendments

F355 S. 189 ceased to have effect (1.10.1992) by virtue of Criminal Justice Act 1991 (c. 53), s. 16, **Sch. 3**, Pt. II para. 7(4) (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.

F356 190 . . . . . .

Textual Amendments

F356 S. 190 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 72, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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191 Effects of probation and absolute discharge.

(1) Subject as hereinafter provided, a conviction of an offence for which an order is made . . . [F357] placing the offender on probation or discharging him absolutely shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of laying it before a court as a previous conviction in subsequent proceedings for another offence:

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

(2) Without prejudice to the foregoing provisions of this section, the conviction of an offender who is placed on probation or discharged absolutely as aforesaid shall in any event be disregarded for the purposes of any enactment which imposes any disqualification or disability upon convicted persons, or authorises or requires the imposition of any such disqualification or disability.

(3) The foregoing provisions of this section shall not affect—

[[F358](a) any right to appeal;**]**

(b) the operation, in relation to any such offender, of any enactment which was in force as at the commencement of section 9(3)(b) of the [M50]Criminal Justice (Scotland) Act 1949 and is expressed to extend to persons dealt with under section 1(1) of the [M51]Probation of Offenders Act 1907 as well as to convicted persons.

(4) Where a person charged with an offence has at any time previously been [F359]. . . discharged absolutely in respect of the commission by him of an offence it shall be competent, in the proceedings for that offence, to bring before the court the [F359]. . . order of absolute discharge in like manner as if the order were a conviction.

Textual Amendments

F357 Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 8**

F358 S. 191(3)(a) substituted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(3)**

F359 Words in s. 191(4) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 73, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Modifications etc. (not altering text)

C16 S. 191 amended by Licensed Premises (Exclusion of Certain Persons) Act 1980 (c. 32, SIF 68A:1,2), **s. 1(2)(c)**

C17 S. 191 excluded by Road Traffic Offenders Act 1988 (c. 53, SIF 107:1), **s. 46(3)**

Marginal Citations

M50 1949 c. 94.**(39:1).**

M51 1907 c. 17.

192 Probation reports.

Where a report by an officer of a local authority is made to any court [F360]. . .with a view to assisting the court in determining the most suitable method of dealing with

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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:

F360 . . .

Textual Amendments

F360 S. 192: words and proviso repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 74, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Penalties for statutory offences

193 Power to mitigate penalties.

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

(1) to reduce the period of imprisonment:

(2) to substitute for imprisonment (either with or without caution for good behaviour, not exceeding **[**F361the prescribed sum within the meaning of section 289B of this Act**]** and a period of 12 months) a fine . . . F362.

(3) to substitute the finding of caution not exceeding **[**F361the prescribed sum within the meaning of section 289B of this Act**]** and the period of 12 months for a fine or imprisonment:

(4) to reduce the amount of any fine:

(5) to dispense with the finding of caution:

Provided that,

(i) where any Act carries into effect a treaty, convention, or agreement with a foreign state, and such treaty, convention, or agreement stipulates for a fine of minimum amount, the court shall not be entitled by virtue of this section to reduce the amount of such fine below that minimum amount;

(ii) this section shall not apply to proceedings taken under any Act relating to any of Her Majesty's regular or auxiliary forces.

Textual Amendments

F361 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **s. 46(2)**

F362 Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 8**

[F363**193A Fines on conviction on indicment to be without limit.**

[Where a person convicted on indictment of any offence (whether triable only on F364(1)**]** indictment or triable either on indictment or summarily **[**F365other than by virtue of

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[[F366]section 457A(4) of this Act**]**) would, apart from this **[**[F367]subsection**]** be liable to a fine **[**[F368]of or**]** not exceeding a specified amount, he shall by virtue of this **[**[F367]subsection**]** be liable to a fine of any amount.**]**

[[F369](2) Where any Act confers a power by subordinate instrument to make a person liable on conviction on indictment of any offence mentioned in subsection (1) above to a fine or a maximum fine of a specified amount, or which shall not exceed a specified amount, the fine which may be provided in the exercise of that power shall by virtue of this subsection be a fine of an unlimited amount.**]]**

Textual Amendments

F363 S. 193A inserted by Criminal Law Act 1977 (c. 45, SIF 39:1), **Sch. 11 para. 1**

F364 Word inserted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **Sch. 15 para. 17(a)**

F365 Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 37**

F366 Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **Sch. 15 para. 17(b)**

F367 Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **Sch. 15 para. 17(d)**

F368 Words inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **Sch. 15 para. 17(c)**

F369 S. 193A(2) inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **Sch. 15 para. 17(e)**

193B . . . . . [F370]

Textual Amendments

F370 S. 193B which was inserted by Law Reform (Miscellaneous Provisions) Act 1985 (c. 73, SIF 39:1), s.39, **Sch. 3 para. 1** is now repealed by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(2), **Sch. 2**

Fines

[[F371]194 Application of summary procedure provisions relating to fines.

(1) The provisions of Part II of this Act specified in subsection (2) below shall, subject to any necessary modifications, apply in relation to solemn proceedings as they apply in relation to summary proceedings.

(2) The provisions mentioned in subsection (1) above are—

section 395(1) (means of offender to be taken into account);
section 395A (power to remit fines);
section 396 (time for payment);
section 397 (further time for payment);
section 398 (reasons for default);
section 399 (payment by instalments);
section 400 (supervision pending payment of fine);
section 401(2) and (3) (supplementary provisions);
section 403 (transfer of fine orders);
section 404 (action of clerk of court on transfer of fine order);

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section 406 (substitution of custody for imprisonment where child defaults on fine);
section 407 (maximum period of imprisonment for non-payment of fine);
section 408 (discharge from imprisonment to be specified);
section 409 (payment of fine in part by prisoner);
section 411 (recovery by civil diligence);
[[F372]section 412A (supervised attendance orders in place of fines for 16 and 17 year olds);
section 412B (supervised attendance orders where court allows further time to pay;**]**
Schedule 7 (application of sums paid as part of fine under section 409).**]**

Textual Amendments

F371 S. 194 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 47, **Sch. 6 para. 3**

F372 Entries in s. 194(2) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 35(9)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Modifications etc. (not altering text)

C18 S. 194 amended by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 7(1)**, 47(4)(a)

195 . . . . . [F373]

Textual Amendments

F373 Ss. 195, 197–202 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 8**

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

[[F374](1)**]** Any sentence or decree for any fine or expenses pronounced by any sheriff court may be enforced against the person or effects of any party against whom any such sentence or decree shall have been awarded in any other sheriff court district, as well as in the district where such sentence or decree is pronounced:

[F375]. . .

[[F376](2) A fine imposed by the High Court shall be remitted for enforcement to, and shall be enforceable as if it had been imposed by—

(a) where the person upon whom the fine was imposed resides in Scotland, the sheriff for the district where that person resides;

(b) where that person resides outwith Scotland, the sheriff before whom he was brought for examination in relation to the offence for which the fine was imposed.**]**

Textual Amendments

F374 Word inserted by virtue of Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 48, **Sch. 6 para. 3**

Changes to legislation: *Criminal Procedure (Scotland) Act 1975, Procedure prior to Trial is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F375 S. 196 proviso repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 75, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F376 S. 196(2) inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 48, **Sch. 6 para. 3**

Modifications etc. (not altering text)

C19 S. 196 applied by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 7(1)**, 16(3), 47(4)(a)

C20 S. 196 extended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **ss. 70(2)**, 80(1), 113(1); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

197—202. . . . . . F377

Textual Amendments

F377 Ss. 195, 197–202 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 8**

203 Fines payable to H.M. Exchequer.

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

Modifications etc. (not altering text)

C21 S. 203 applied by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 7(1)**, 16(3), 47(4)(a)

C22 S. 203 extended by Prevention of Terrorism (Temporary Provisions) Act 1989 (c. 4, SIF 39:2), s. 13(8), **Sch. 4 para. 12(4)**

C23 S. 203 amended (5.12.1996) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), **ss. 20(4)**, 75; S.I. 1996/2894, art. 3, **Sch.**

C24 S. 203 extended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, ss. 70(2), 80(1), 100, 113(1), **Sch. 3 para. 4(4)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

204 . . . . . F378

Textual Amendments

F378 Ss. 204, 208–211 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 5, **Sch. 8** and S.I. 1983/1580, **art. 3**

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Imprisonment, etc.

[F379 205 Punishment for murder.

(1) Subject to subsections (2) and (3) below, a person convicted of murder shall be sentenced to imprisonment for life.

(2) Where a person convicted of murder is under the age of 18 years he shall not be sentenced to imprisonment for life but to be detained without limit of time and shall be liable to be detained in such place, and under such conditions, as the Secretary of State may direct.

(3) Where a person convicted of murder has attained the age of 18 years but is under the age of 21 years he shall not be sentenced to imprisonment for life but to be detained in a young offenders institution and shall be liable to be detained for life.**]**

Textual Amendments

F379 S. 205, 205A substituted for s. 205 by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **s. 43**

205A Recommendation as to minimum period of detention for person convicted of murder.

(1) On sentencing any person convicted of murder a judge may make a recommendation as to the minimum period which should elapse before, under section **[**F380 1(4) of the Prisoners and Criminal Proceedings (Scotland) Act 1993**]**, the Secretary of State releases that person on licence.

(2) When making a recommendation under subsection (1) above, the judge shall state his reasons for so recommending.

(3) Notwithstanding the proviso to subsection (1) of section 228 of this Act it shall be competent to appeal under paragraph (b) or (c) of that subsection against a recommendation made under subsection (1) above; and for the purposes of such appeal (including the High Court's power of disposal under section 254(3)(b) of this Act) the recommendation shall be deemed part of the sentence passed on conviction.

Textual Amendments

F380 Words in s. 205A(1) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(8)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **art. 3(4)**

[F381 206 Detention of children convicted on indictment.

(1) Subject to section 205 of this Act, where a child is convicted and the court is of the opinion that no other method of dealing with him is appropriate, it may sentence him to be detained for a period which it shall specify in the sentence; and the child shall during that period be liable to be detained in such place and on such conditions as the Secretary of State may direct .

(2) . . . . . F382**]**

Changes to legislation: *Criminal Procedure (Scotland) Act 1975, Procedure prior to Trial is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F381 S. 206 substituted for s. 206(1) by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(1), **Sch. 2 para. 12**

F382 S. 206(2)–(7) repealed by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(2), **Sch. 3**

206A F383

Textual Amendments

F383 S. 206A which was inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 39:1), **s. 45(1)** is now repealed by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(2), **Sch. 3**

[F384207 Detention of young offenders.

(1) It shall not be competent to impose imprisonment on a person under 21 years of age.

(2) Subject to section 205(2) and (3) of this Act and to subsections (3) and (4) below a court may impose detention (whether by way of sentence or otherwise) on a person, who is not less than 16 but under 21 years of age, where but for subsection (1) above the court would have power to impose a period of imprisonment; and the period of detention imposed under this section on any person shall not exceed the maximum period of imprisonment which might otherwise have been imposed.

(3) The court shall not under subsection (2) above impose detention on a person unless it is of the opinion that no other method of dealing with him is appropriate; and the court shall state its reasons for that opinion, and, except in the case of the High Court, those reasons shall be entered in the record of proceedings.

(4) To enable the court to form an opinion under subsection (3) above, it shall obtain (from an officer of a local authority or otherwise) such information as it can about the offender's circumstances; and it shall also take into account any information before it concerning the offender's character and physical and mental condition.

[A sentence of detention imposed under this section shall be a sentence of detention F385(5) in a young offenders institution.**]**

F386(11) . . . . . .**]**

Textual Amendments

F384 S. 207 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 45(1), **Sch. 6 para. 5** and S.I. 1983/1580 art. 3

F385 S. 207(5) substituted for s. 207(5)–(10) by Criminal Justice Act 1988 (c. 33, SIF 39:1), **s. 124(1)**

F386 S. 207(11) repealed (1.10.1993) by 1993 c. 9, s. 47(3), **Sch. 7 Pt. I** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **art. 3(4)**

Modifications etc. (not altering text)

C25 S. 207 extended by Contempt of Court Act 1981 (c. 49, SIF 39:3), **s. 15(3)**

***Changes to legislation:** Criminal Procedure (Scotland) Act 1975, Procedure prior to Trial is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

208–211 . . . . . [F387]

Textual Amendments

F387 Ss. 204, 208–211 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 5, **Sch. 8** and S.I. 1983/1580, **art. 3**

[F388]**212** . . . . . .

Textual Amendments

F388 S. 212 repealed (1.10.1993) by 1993 c. 9, s. 47(3), **Sch. 7 Pt.I** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **art. 3(4)**

[F389 212A Supervised release orders.

(1) Where a person is convicted of an offence and is sentenced to imprisonment for a term of not less than twelve months but less than four years, the court on passing sentence may, if it considers that it is necessary to do so to protect the public from serious harm from the offender on his release, make such order as is mentioned in subsection (2) below.

F390 **[** (1A) A court shall, before making an order under subsection (1) above, consider a report by a relevant officer of a local authority about the offender and his circumstances and, if the court thinks it necessary, hear that officer.**]**

(2) The order referred to in subsection (1) above (to be known as a "supervised release order") is that the person, during a relevant period—

(a) be under the supervision either of a relevant officer of a local authority or of a probation officer appointed for or assigned to a petty sessions area (such local authority or the justices for such area to be designated under section 14(4) or 15(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993);

F391 **[** (b) comply with—

(i) such requirements as may be imposed by the court in the order;**]** and

(ii) such requirements as that officer may reasonably specify, **[**F392; and

(c) comply with the standard requirements imposed by virtue of subsection (3)(a)(i) below**]**

for the purpose of securing the good conduct of the person or preventing, or lessening the possibility of, his committing a further offence (whether or not an offence of the kind for which he was sentenced).

(3) A supervised release order—

F393 **[** (a) shall—

(i) without prejudice to subsection (2)(b) above, contain such requirements (in this section referred to as the "standard requirements"); and

(ii) be as nearly as possible in such form,

as may be prescribed by Act of Adjournal;**]**

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(b) for the purposes of any appeal or review constitutes part of the sentence of the person in respect of whom the order is made; and

(c) shall have no effect during any period in which the person is subject to a licence under Part I of the said Act of 1993.

(4) Before making a supervised release order as respects a person the court shall explain to him, in as straightforward a way as is practicable, the effect of the order and the possible consequences for him of any breach of it.

(5) The clerk of the court by which a supervised release order is made in respect of a person shall—

(a) forthwith send a copy of the order to the person and to the Secretary of State; and

(b) within seven days after the date on which the order is made, send to the Secretary of State such documents and information relating to the case and to the person as are likely to be of assistance to a supervising officer.

(6) In this section—

"relevant officer" has the same meaning as in Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993;

"relevant period" means such period as may be specified in the supervised release order, being a period—

(a) not exceeding twelve months after the date of the person's release; and

(b) no part of which is later than the date by which the entire term of imprisonment specified in his sentence has elapsed; and

"supervising officer" means, where an authority has or justices have been designated as is mentioned in subsection (2)(a) above for the purposes of the order, any relevant officer or, as the case may be, probation officer who is for the time being supervising for those purposes the person released.**]**

[[F394](7) The foregoing provisions of this section apply to a person sentenced under section 207 or 415 of this Act as the provisions apply to a person sentenced to a period of imprisonment.**]**

Textual Amendments

F389 S. 212A inserted (1.10.1993) by 1993 c. 9, **ss. 5**, 6, 10, 14(1) (with ss. 5(1), 6(1), 10, 27, 47(2), Sch. 6 paras. 1, 2, 6, 7); S.I. 1993/2050, **art. 3(4)**

F390 S. 212A(1A) inserted (S.) (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 36**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F391 S. 212A(2)(b)(i) substituted (S.) (3.2.1995) for s. 212A(b)(i) and the word "and" immediately preceding it by 1994 c. 33, **s. 132(a)(i)**; S.I. 1995/127, art. 2(1), **Sch. 1** (subject to transitional provisions in art. 2(2)(3))

F392 S. 212A(2)(c) and the word "and" immediately preceding it added (S.) (3.2.1995) by 1994 c. 33, **s. 132(a)(ii)**; S.I. 1995/127, art. 2(1), **Sch. 1** (subject to transitional provisions in art. 2(2)(3))

F393 S. 212A(3)(a) substituted (S.) (3.2.1995) by 1994 c. 33, **s. 132(b)**; S.I. 1995/127, art. 2(1), **Sch. 1** (subject to transitional provisions in art. 2(2)(3))

F394 S. 212A(7) added (27.7.1993) by 1993 c. 36, **s. 69**

Modifications etc. (not altering text)

C26 S. 212A excluded (1.10.1993) by 1993 c. 9, **ss. 5**, 6, 10, 14(2) (with ss. 5(1), 6(1), 10, 27, 47(2), Sch. 6 paras. 1, 2, 6, 7); S.I. 1993/2050, **art. 3(4)**

***Changes to legislation:** Criminal Procedure (Scotland) Act 1975, Procedure prior to Trial is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

S. 212A modified (1.10.1993) by 1993 c. 9, **s. 14(3)** (with ss. 5(1), 6(1), 10, 27, 47(2), Sch. 6 paras. 1, 2, 6, 7); S.I. 1993/2050, **art. 3(4)**

213 . . . . . F395

Textual Amendments

F395 S. 213 repealed by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(2), **Sch. 3**

F396**214** . . . . . .

Textual Amendments

F396 S. 214 repealed (1.10.1993) by 1993 c. 9, s. 47(3), **Sch. 7 Pt.I** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **art. 3(4)**

[F397215 Legal custody.

Any person required or authorised by or under this Act or **[**F398any other enactment or any subordinate instrument**]** to be taken to any place, or to be detained or kept in custody shall, while being so taken or detained or kept, be deemed to be in legal custody.**]**

Textual Amendments

F397 S. 215 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 39**

F398 Words substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 12**

Miscellaneous provisions as to conviction, sentence, etc.

216 Art and part guilt of statutory offence.

[F399(1)**]** A person may be convicted of, and punished for, contravention of any **[**F400enactment**]**, notwithstanding that he was guilty of such contravention as art and part only.

[F401(2) Without prejudice to subsection (1) above or to any express provision in any enactment having the like effect to this subsection, any person who aids, abets, counsels, procures or incites any other person to commit an offence against the provisions of any enactment shall be guilty of an offence and shall be liable on conviction, unless the enactment otherwise requires, to the same punishment as might be imposed on conviction of the first-mentioned offence.**]**

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Textual Amendments

F399 S. 216 renumbered as s. 216(1) by virtue of Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a)**, 64(1)(2)

F400 Word substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a)**, 64(1)(2)

F401 S. 216(2) inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a)**, 64(1)(2)

217 Form of sentence.

(1) In any case the sentence to be pronounced shall be announced by the judge in open court and shall be entered in the record in the form now in use in the High Court, and it shall not be necessary to read the entry of the sentence from the record.

(2) In recording sentences of imprisonment, it shall be sufficient to minute the term of imprisonment to which the court sentenced the panel, without specifying the prison in which the sentence is to be carried out; and such entries of sentences, signed by the clerk of court, shall be full warrant and authority for all execution to follow thereon, and for the clerk to issue extracts thereof for carrying the same into execution or otherwise.

(3) In extracting sentences of imprisonment, the extract may be in the form set out in an Act of Adjournal under this Act or as nearly as may be in such form.

[F402 217A Sentence following guilty plea.

In determining what sentence to pass on, or what other disposal or order to make in relation to, an offender who has pled guilty to an offence, a court may take into account—

(a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and

(b) the circumstances in which that indication was given.]

Textual Amendments

F402 S. 217A inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 33**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

218 Consideration of time spent in custody.

[F403(1)**]** A court, in passing a sentence of imprisonment or detention . . . F404 on a person for any offence, shall

[F405(a)**]** in determining the period of imprisonment or detention, have regard to any period of time spent in custody by that person on remand awaiting trial or sentence **[**F406or spent in custody awaiting extradition to the United Kingdom;

(b) specify the date of commencement of the sentence; and

(c) if that person—

(i) has spent a period of time in custody on remand awaiting trial or sentence; or

(ii) is an extradited prisoner for the purposes of this section,

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and the date specified under paragraph (b) above is not earlier than the date on which sentence is passed, state its reasons for not specifying an earlier date.**]**

[F407(2) A prisoner is an extradited prisoner for the purposes of this section if—

(a) he was tried for the offence in respect of which his sentence of imprisonment was imposed—

(i) after having been extradited to the United Kingdom; and

(ii) without having first been restored to the state from which extradited or having had an opportunity of leaving the United Kingdom; and

(b) he was for any period kept in custody while awaiting such extradition.

(3) In this section "extradited to the United Kingdom" means returned to the United Kingdom—

(a) in pursuance of extradition arrangements (as defined in section 3 of the Extradition Act 1989);

(b) under any law which corresponds to that Act and is a law of a designated Commonwealth country (as defined in section 5(1) of that Act);

(c) under that Act as extended to a colony or under any corresponding law of a colony; or

[F408(cc) in pursuance of arrangements with a foreign state in respect of which an Order in Council under section 2 of the Extradition Act 1870 is in force;**]**

(d) in pursuance of a warrant of arrest endorsed in the Republic of Ireland under the law of that country corresponding to the Backing of Warrants (Republic of Ireland) Act 1965.**]**

Textual Amendments

F403 S. 218 renumbered s. 218(1) (18.9.1993) by 1993 c. 9, **s. 41(4)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), **Sch. 2**

F404 Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 8** and S.I. 1983/1580, **art. 3**

F405 Word in s. 218 inserted (18.9.1993) by 1993 c. 9, **s. 41(2)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), **Sch. 2**

F406 Words in s. 218 inserted (18.9.1993) by 1993 c. 9, **s. 41(3)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), **Sch. 2**

F407 S. 218(2)(3) inserted (18.9.1993) by 1993 c. 9, **s. 41(5)** (with s. 47(2), Sch. 6 paras, 1, 2); S.I. 1993/2050, art. 3(3), **Sch. 2**

F408 S. 218(3)(cc) inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 48(2)**; S.I. 1995/127, art. 2(1), **Sch. 1** Appendix A (subject to transitional provisions in art. 2(2)(3))

219 Deferred sentence.

[F409(1)**]** It shall be competent for a court to defer sentence after conviction for a period and on such conditions as the court may determine.

[F410(2) If it appears to the court by which sentence on a person has been deferred under subsection (1) above that that person has been convicted, during the period of deferment, by a court in any part of Great Britain of an offence committed during that period and has been dealt with for that offence, the first mentioned court may issue a warrant for the arrest of that person, or may, instead of issuing such a warrant in the first instance, issue a citation requiring him to appear before it at such time as may

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be specified in the citation; and on his appearance or on his being brought before the court it may deal with him in any manner in which it would be competent for it to deal with him on the expiry of the period of deferment.

(3) Where a court which has deferred sentence under subsection (1) above on a person convicts that person of another offence during the period of deferment, it may deal with him for the original offence in any manner in which it would be competent for it to deal with him on the expiry of the period of deferment, as well as for the offence committed during the said period.**]**

Textual Amendments

F409 Word inserted by virtue of Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **s. 54**

F410 S. 219(2) inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **s. 54**

220 Capital sentence not competent under this Act.

A capital sentence shall not be competent under this Act.

221 No penal servitude or hard labour.

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

Provided that nothing in this subsection shall be construed as empowering a court, other than the High Court, to pass a sentence of imprisonment for a term exceeding **[**[F411]three years**]**.

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

Textual Amendments

F411 Words substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a)**, 58(3)

222 No fees exigible.

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

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[F412]223 . . . . . .

Textual Amendments

F412 S. 223 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 181(2), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F413]223A Disqualification in Scotland where vehicle used to commit offence.

(1) Where a person is convicted of an offence (other than one triable only summarily) and the court which passes sentence is satisfied that a motor vehicle was used for the purpose of committing, or facilitating the commission of that offence, the court may order him to be disqualified for such period as the court thinks fit from holding or obtaining a licence to drive a motor vehicle granted under Part III of the Road Traffic Act 1988.

(2) A court which makes an order under this section disqualifying a person from holding or obtaining a licence shall require him to produce any such licence held by him and its counterpart.

(3) Any reference in this section to facilitating the commission of an offence shall include a reference to the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.

(4) In relation to licences which came into force before 1st June 1990, the reference in subsection (2) above to the counterpart of a licence shall be disregarded.**]**

Textual Amendments

F413 S. 223A inserted (1.7.1992) by Road Traffic Act 1991 (c.40), **s. 39**; S.I. 1992/1286, art. 2, **Sch.**

224 Warrant of search for forfeited articles.

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

(a) that there is reasonable cause to believe that the article is to be found in any place or premises; and

(b) that admission to the place or premises has been refused or that a refusal of such admission is apprehended,

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

[F414]225 . . . . . .

Textual Amendments

F414 Ss. 225, 226, 227 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 76, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Changes to legislation: *Criminal Procedure (Scotland) Act 1975, Procedure prior to Trial is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[F415226 . . . . . .

Textual Amendments

F415 Ss. 225, 226, 227 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 76, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F416227 . . . . . .

Textual Amendments

F416 Ss. 225, 226, 227 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 76, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F417227A Correction of entries.

(1) Subject to the provisions of this section, it shall be competent to correct an entry in—

(a) the record of proceedings in a solemn prosecution; or

(b) the extract of a sentence passed or an order of court made in such proceedings,

in so far as that entry constitutes an error of recording or is incomplete.

(2) Such entry may be corrected—

(a) by the clerk of the court, at any time before either the sentence (or order) of the court is executed or, on appeal, the proceedings are transmitted to the Clerk of Justiciary;

(b) by the clerk of the court, under the authority of the court which passed the sentence or made the order, at any time after the execution of the sentence (or order) of the court but before such transmission as is mentioned in paragraph (a) above; or

(c) by the clerk of the court under the authority of the High Court in the case of a remit under subsection (4)(b) below.

(3) A correction in accordance with paragraph (b) or (c) of subsection (2) above shall be intimated to the prosecutor and to the former accused or his solicitor.

(4) Where, during the course of an appeal, the High Court becomes aware of an erroneous or incomplete entry, such as is mentioned in subsection (1) above, the court—

(a) may consider and determine the appeal as if such entry were corrected; and

(b) either before or after the determination of the appeal, may remit the proceedings to the court of first instance for correction in accordance with subsection (2)(c) above.

(5) Any correction under subsections (1) and (2) above by the clerk of the court shall be authenticated by his signature and, if such correction is authorised by a court, shall record the name of the judge or judges authorising such correction and the date of such authority.**]**

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Textual Amendments

F417 S. 227A inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **s. 54**

APPEAL

Procedure prior to hearing

[F418228 Right of appeal.

(1) Any person convicted on indictment may [F419, with leave granted in accordance with section 230A of this Act,] appeal in accordance with the provisions of this Part of this Act, to the High Court—

(a) against such conviction;

(b) against the sentence passed on such conviction

[F420(bb) against his absolute discharge or admonition;

(bc) against any probation order or any community service order under the M52Community Service by Offenders (Scotland) Act 1978;

(bd) against any order deferring sentence;]

;or

(c) against both such conviction and such sentence [F421or disposal or order]:

Provided that there shall be no appeal against any sentence fixed by law.

(2) By an appeal under subsection (1) of this section, a person may bring under review of the High Court any alleged miscarriage of justice in the proceedings in which he was convicted, including any alleged miscarriage of justice on the basis of the existence and significance of additional evidence which was not heard at the trial and which was not available and could not reasonably have been made available at the trial.]

Textual Amendments

F418 S. 228 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 1, **Sch. 6 para. 6**

F419 Words in s. 228(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 42(1)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F420 S. 228(1)(bb)-(bd) inserted (27.7.1993) by 1993 c. 36, **s. 68(1)(a)**

F421 Words in s. 228(1)(c) added (27.7.1993) by 1993 c. 36, **s. 68(1)(b)**

Modifications etc. (not altering text)

C27 S. 228 modified by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 2(2)**, 47(4)(a)

C28 S. 228 modified (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1987 c. 41, **s. 2** as substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 113(3), **Sch. 5 para. 3**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
S. 228 extended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **ss. 70(2)**, 76(5), 113(1); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Changes to legislation: *Criminal Procedure (Scotland) Act 1975, Procedure prior to Trial is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Marginal Citations

M52 1978 c. 49.

[F422 228A Appeal by Lord Advocate against sentence in solemn proceedings.

Where a person has been convicted on indictment, the Lord Advocate may appeal against the sentence passed on conviction [F423 or against any probation order or any community service order under the Community Service by Offenders (Scotland) Act 1978 or against the person's absolute discharge or admonition or against any order deferring sentence]—

[F424 (a) if it appears to the Lord Advocate that, as the case may be—

(i) the sentence is unduly lenient;

(ii) the making of the probation order or community service order is unduly lenient or its terms are unduly lenient;

(iii) to dismiss with an admonition or to discharge absolutely is unduly lenient; or

(iv) the deferment of sentence is inappropriate or on unduly lenient conditions;]

(b) on a point of law.]

Textual Amendments

F422 S. 228A inserted (1.10.1993) by 1993 c. 9, **s. 42(1)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 4(1)(a)

F423 Words in s. 228A inserted (27.7.1993) by 1993 c. 36, **s. 68(2)(a)**

F424 S. 228A(a) substituted (27.7.1993) by 1993 c. 36, **s. 68(2)(b)**

229 . . . . . F425

Textual Amendments

F425 Ss. 229, 232, 253(2) repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 6, **Sch. 8**

230 Bill of suspension not competent.

It shall not be competent to appeal to the High Court by bill of suspension against any conviction, sentence, judgment or order pronounced in any proceedings on indictment in the sheriff court.

[F426 230A Leave to appeal.

(1) The decision whether to grant leave to appeal for the purposes of section 228(1) of this Act shall be made by a judge of the High Court who shall—

(a) if he considers that the documents mentioned in subsection (2) below disclose arguable grounds of appeal, grant leave to appeal and make such comments in writing as he considers appropriate; and

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(b) in any other case—

(i) refuse leave to appeal and give reasons in writing for the refusal; and

(ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

(2) The documents referred to in subsection (1) above are—

(a) the note of appeal lodged under section 233(1)(a) of this Act;

(b) in a case to which section 236 of this Act applies, the certified copy or, as the case may be, the record of the proceedings at the trial;

(c) where the judge who presided at the trial furnishes a report under section 236A of this Act, that report; and

(d) where, by virtue of section 275(1) of this Act, a transcript of the charge to the jury of the judge who presided at the trial is delivered to the Clerk of Justiciary, that transcript.

(3) A warrant granted under subsection (1)(b)(ii) above shall not take effect until the expiry of the period of 14 days mentioned in subsection (4) below without an application to the High Court for leave to appeal having been lodged by the appellant under that subsection.

(4) Where leave to appeal is refused under subsection (1) above the appellant may, within 14 days of intimation under subsection (10) below, apply to the High Court for leave to appeal.

(5) In deciding an application under subsection (4) above the High Court shall—

(a) if, after considering the documents mentioned in subsection (2) above and the reasons for the refusal, the court is of the opinion that there are arguable grounds of appeal, grant leave to appeal and make such comments in writing as the court considers appropriate; and

(b) in any other case—

(i) refuse leave to appeal and give reasons in writing for the refusal; and

(ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

(6) Consideration whether to grant leave to appeal under subsection (1) or (5) above shall take place in chambers without the parties being present.

(7) Comments in writing made under subsection (1)(a) or (5)(a) above may, without prejudice to the generality of that provision, specify the arguable grounds of appeal (whether or not they are contained in the note of appeal) on the basis of which leave to appeal is granted.

(8) Where the arguable grounds of appeal are specified by virtue of subsection (7) above it shall not, except by leave of the High Court on cause shown, be competent for the appellant to found any aspect of his appeal on any ground of appeal contained in the note of appeal but not so specified.

(9) Any application by the appellant for the leave of the High Court under subsection (8) above—

(a) shall be made not less than seven days before the date fixed for the hearing of the appeal; and

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(b) shall, not less than seven days before that date, be intimated by the appellant to the Crown Agent.

(10) The Clerk of Justiciary shall forthwith intimate—

(a) a decision under subsection (1) or (5) above; and

(b) in the case of a refusal of leave to appeal, the reasons for the decision,

to the appellant or his solicitor and to the Crown Agent.**]**

Textual Amendments

F426 S. 230A inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 42(2)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F427231 Intimation of intention to appeal.

(1) Subject to section 236B(2) of this Act **[F428**and to section 2(2) of the Criminal Justice (Scotland) Act 1987 **[F429**and section 76(4) of the Criminal Justice (Scotland) Act 1995**]** (postponed confiscation orders)**]**, where a person desires to appeal under section 228(1)(a) or (c) of this Act, he shall, within two weeks of the final determination of the proceedings, lodge with the Clerk of Justiciary written intimation of intention to appeal and send a copy to the Crown Agent.

(2) Such intimation shall identify the proceedings and be in as nearly as may be the form prescribed by Act of Adjournal under this Act.

(3) On such intimation being lodged by a person in custody, the Clerk of Justiciary shall give notice thereof to the Secretary of State.

(4) **[F430**Subject to subsection (5) below,**]** for the purposes of subsection (1) above and section 270(2) of this Act, proceedings shall be deemed finally determined on the day on which sentence is passed in open court; except that, where in relation to an appeal under section 228(1)(a) of this Act sentence is deferred under section 219 of this Act, they shall be deemed finally determined on the day on which sentence is first so deferred in open court.**]**

[F431(5) Without prejudice to subsection (2) of section 2 of the said Act of 1987 **[F432**and subsection (4) of section 76 of the said Act of 1995**]**, the reference in subsection (4) above to "the day on which sentence is passed in open court" shall, in relation to any case in which, under subsection (1) of **[F433**the said section 2 or 76**]**, a decision has been postponed for a period, be construed as a reference to the day on which that decision is made (whether or not a confiscation order is then made or any other sentence is then passed).**]**

Textual Amendments

F427 S. 231 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 3, **Sch. 6 para. 6**

F428 Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 45(6)(a)**, 47(4)(a)

F429 Words in s. 231(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. II para. 181(3)(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F430 Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 45(6)(b)**, 47(4)(a)

***Changes to legislation:** Criminal Procedure (Scotland) Act 1975, Procedure prior to Trial is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F431 S. 231(5) added by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 45(6)(c)**, 47(4)(a)

F432 Words in s. 231(5) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. II para. 181(3)(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F433 Words in s. 231(5) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. II para. 181(3)(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Modifications etc. (not altering text)

C29 S. 231(1) modified by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 2(2)**, 47(4)(a)
S. 231(1) amended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **ss. 70(2)**, 76(4), 113(1); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
S. 231(1) modified (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1987 c. 41, **s. 2** as substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 113(3), **Sch. 5 para. 3**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

232 . . . . . F434

Textual Amendments

F434 Ss. 229, 232, 253(2) repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 6, **Sch. 8**

[F435233 Note of appeal.

(1) Subject to section 236B(2) of this Act,

[F436(a)] within six weeks of lodging intimation of intention to appear or, in the case of an appeal [F437under section 228(1)(b), (bb), (bc) or (bd) of this Act], within two weeks of the passing of the sentence [F438(or as the case may be, of the making of the order disposing of the case or deferring sentence)] in open court, the convicted person may lodge a written note of appeal with the Clerk of Justiciary who shall send a copy to the judge who presided at the trial and to the Crown Agent: Provided that the first mentioned period may be extended, before expiry therof, by the Clerk of Justiciary [F439; or]

[F440(b) as the case may be, within four weeks of the passing of the sentence [F441(or as the case may be, of the making of the order disposing of the case or deferring sentence)]in open court, the Lord Advocate may lodge such a note with the Clerk of Justiciary, who shall send a copy to the said judge and to the convicted person or that person's solicitor.]

(2) Such a note shall identify the proceedings, contain a full statement of all the grounds of appeal and be in as nearly as may be the form prescribed by Act of Adjournal under this Act.

(3) Except by leave of the High Court on cause shown it shall not be competent for an appellant to found any aspect of his appeal on a ground not contained in the note of appeal.

[F442(3A) Subsection (3) above shall not apply as respects any ground of appeal specified as an arguable ground of appeal by virtue of subsection (7) of section 230A of this Act.]

Changes to legislation: *Criminal Procedure (Scotland) Act 1975, Procedure prior to Trial is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) On a note of appeal **[**[F443]under section 228(1)(b), (bb), (bc) or (bd)**]** being lodged by an appellant in custody the Clerk of Justiciary shall give notice thereof to the Secretary of State.**]**

Textual Amendments

F435 S. 233 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 5, **Sch. 6 para. 6**

F436 Words in s. 233(1) renumbered as s. 233(1)(a) (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(9)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

F437 S. 183(5A) inserted by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), **s. 7(b)**

F438 Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 68(2), **Sch. 13 Pt. II para. 3**

F439 Word inserted by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), **s. 7(a)**

F440 Words added by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), **s. 7(a)**

F441 Words in s. 183(1) inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), **s. 61(1)(a)**; S.I. 1991/850, art. 3, **Sch.**

F442 Words substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 10(b)**

F443 Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 10(a)**

234 Presentation of appeal in writing.

(1) If an appellant **[**[F444]other than the Lord Advocate**]** . . . [F445] desires to present his case and his argument in writing instead of orally he shall intimate this desire to the Clerk of Justiciary at least four days before the diet fixed for the hearing of the appeal . . . [F445], and, at the same time, shall lodge with the Clerk of Justiciary three copies of his case and argument; at the same time, he shall also send a copy thereof to the Crown Agent. Any case or argument so presented shall be considered by the High Court.

(2) Unless the High Court shall otherwise direct, the respondent, in a case to which this section applies, shall not make a written reply to the case and argument in writing, but shall reply orally thereto at the diet fixed for the hearing of the appeal or application for leave to appeal.

(3) Unless the High Court shall otherwise allow, an appellant . . . [F445] who has presented his case and argument in writing shall not be entitled to submit in addition an oral argument to the court in support of the appeal . . . [F445].

Textual Amendments

F444 Words in s. 234(1) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(10)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

F445 Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 6, **Sch. 8**

235 Applications may be made orally or in writing.

Except where otherwise provided in this Part of this Act, any application to the High Court may be made by the appellant or respondent as the case may be or by counsel on his behalf, orally or in writing. [F446]. . ..

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Textual Amendments

F446 S. 183(1A) inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), **s. 61(1)(b)**; S.I. 1991/850, art. 3, **Sch.**

236 Proceedings in sheriff court to be furnished.

In the case of an appeal . . . [F447] against a conviction or sentence in a sheriff court, the sheriff clerk shall furnish to the Clerk of Justiciary a certified copy of the proceedings at the trial, or shall forward to him the original record of the proceedings, as may be required by the Clerk of Justiciary.

Textual Amendments

F447 Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 6, **Sch. 8**

[F448236AJudge's report.

(1) As soon as is reasonably practicable after his receipt of the copy note of appeal sent to him under section 233(1) of this Act, the judge who presided at the trial shall furnish the Clerk of Justiciary with a report in writing giving the judge's opinion on the case generally and on the grounds contained in the note of appeal; and the Clerk of Justiciary shall send a copy of the report to the convicted person or his solicitor, to the Crown Agent, and, in a case referred under section 263(1) of this Act, to the Secretary of State.

(2) Where the judge's report is not furnished as mentioned in subsection (1) above, the High Court may call for such report to be furnished within such period as it may specify or, if it thinks fit, hear and determine the appeal without such report.

(3) Subject to subsection (1) above, the report of the judge shall be available only to the High Court **[**F449, the parties and, on such conditions as may be prescribed by Act of Adjournal, such other persons or classes of persons as may be so prescribed**].]**

Textual Amendments

F448 Words in s. 183(4)(a) substituted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), **s. 61(1)(c)(i)**; S.I. 1991/850, art. 3, **Sch.**

F449 Word in s. 183(4)(a) substituted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), **s. 61(1)(c)(ii)**; S.I. 1991/850, art. 3, **Sch.**

236B Computation of periods.

(1) Where the last day of any period mentioned in sections 231(1) and 233(1) of this Act falls on a day which the office of the Clerk of Justiciary is closed, such period shall extend to and include the next day on which such office is open.

(2) Any period mentioned in section 231(1) or **[**F450233(1)(a)**]** of this Act may be extended at any time by the High Court in respect of any convicted person; and application for

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such extension may be made under this subsection and shall be in as nearly as may be the form prescribed by Act of Adjournal under this Act.

Textual Amendments

F450 Words in s. 236B(2) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(11)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

[F451]236C . . . . . .

Textual Amendments

F451 S. 183(5B)(5C) inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a)**, 65(1)(2)(a)

[F452]237 . . . . . .

Textual Amendments

F452 S. 183(1A)(a)(b) substituted (1.10.1992) for certain words by Criminal Justice Act 1991 (c. 53), s. 16, **Sch. 3** , Pt. II para. 7(2) (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.

238 Admission of appellant to bail.

[[F453](1) **[**[F454]Subject to subsection (1A) below,**]]**The High Court may, if it thinks fit, on the application of a convicted person, admit him to bail pending the determination of—

(a) his appeal; or

[[F455](b) any relevant appeal by the Lord Advocate under section 228A of this Act.**]**

[[F456](1A) The High Court shall not admit a convicted person to bail under subsection (1) above unless—

(a) where he is the appellant and has not lodged a note of appeal in accordance with section 233(1)(a) of this Act, the application for bail states reasons why it should be granted and sets out the proposed grounds of appeal; or

(b) where the Lord Advocate is the appellant, the application for bail states reasons why it should be granted;

and, in either case, the High Court considers there to be exceptional circumstances justifying admitting the convicted person to bail.**]**

(2) A person who is admitted to bail under subsection (1) above shall, unless the High Court otherwise directs, appear personally in court on the day or days fixed for the hearing of the appeal [F457]. . .; and in the event of his failing to do so the court may—

(a) if he is the appellant—

(i) decline to consider the appeal [F458]. . .; and

(ii) dismiss it summarily; or

(b) whether or not he is the appellant—

(i) consider and determine the appeal [F459]. . .; or

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(ii) without prejudice to section 3 of the Bail etc. (Scotland) Act 1980 (breach of conditions), make such other order as the court thinks fit.

[F460(3) For the purposes of subsections (1) and (2) above, "appellant" includes not only a person who has lodged a note of appeal but also one who has lodged an intimation of intention to appeal.**]**

Textual Amendments

F453 S. 238(1)(2) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(13)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

F454 Words in s. 238(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 5(2)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F455 S. 238(1)(b) substituted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(5)**.

F456 S. 238(1A) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 5(3)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F457 Words in s. 238(2) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 81, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F458 Words in s. 238(2)(a)(i) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 81, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F459 Words in s. 238(2)(b)(i) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 81, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F460 S. 238(3) inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 10(b), **Sch. 6 para. 6**

239 Clerk to give notice of date of hearing.

(1) When the High Court fixes the date for the hearing of an appeal, or of an application **[**F461under section 236B(2) of this Act**]**, the Clerk of Justiciary shall give notice to the Crown Agent and to the solicitor of the **[**F462convicted person**]**, or to the **[**F462convicted person**]** himself if he has no known solicitor. F463. . ..

F464(2) . . . . . .

Textual Amendments

F461 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 11, **Sch. 6 para. 6**

F462 Words in s. 239(1) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(14)(a)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

F463 Words in s. 239(1) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 82(a), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F464 S. 239(2) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 82(b), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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240 Appellant may be present at hearing.

[F465A convicted**]** appellant, notwithstanding that he is in custody, shall be entitled to be present if he desires it, on the hearing of his appeal. F466. . ..

Textual Amendments

F465 Word in s. 240 substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(15)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

F466 Words in s. 240 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 83, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

241 Notice to authorities, etc., of date of hearing.

Where an appellant or applicant is in custody and has obtained leave or is entitled to be present at the hearing of his appeal or application, the Clerk of Justiciary shall notify the appellant or applicant, the Governor of the prison in which the appellant or applicant then is, and the **[**F467Secretary of State**]** of the probable day on which the appeal or application will be heard. The **[**F467Secretary of State**]** shall take steps to transfer the appellant or applicant to a prison convenient for his appearance before the High Court, at such reasonable time before the hearing as shall enable him to consult his legal adviser, if any.

Textual Amendments

F467 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 41**

242 Notice to Prison Commissionersof attendance of appellant at hearing.

When an appellant or applicant is entitled, or has been granted leave to be present at any diet—

(a) before the High Court or any judge thereof, or

(b) for the taking of additional evidence before a person appointed for the purpose under section 252(b) of this Act, or

(c) for an examination or investigation by a special commissioner in terms of section 252(d) of this Act,

the Clerk of Justiciary shall give timeous notice to the **[**F468Secretary of State**]**, in the form set out in an Act of Adjournal under the M53Criminal Appeal (Scotland) Act 1926 or under this Act or as nearly as may be in such form, which notice shall be sufficient warrant to the **[**F468Secretary of State**]** for transmitting the appellant or applicant in custody from prison to the place where said diet or any subsequent diets are to be held and for reconveying him to prison at the conclusion of the said diet and any subsequent diets. The appellant or applicant shall appear at all such diets in ordinary civilian clothes.

Textual Amendments

F468 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 42**

***Changes to legislation:** Criminal Procedure (Scotland) Act 1975, Procedure prior to Trial is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Marginal Citations

M53 1926 c. 15**(39:1).**

[242A [F469]Special provision where appellant is Lord Advocate.

Where the Lord Advocate is the appellant, sections 241 and 242 of this Act shall apply in respect of the convicted person, if in custody, as they apply to an appellant or applicant in custody.**]**

Textual Amendments

F469 S. 242A inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(16)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

243 Warders to attend court.

The **[**[F470]Secretary of State**]** shall, on notice under **[**[F471]section 242 of this Act**]** from the Clerk of Justiciary, cause from time to time such sufficient number of male and female **[**[F470]prison officers**]** to attend the sittings of the court as, having regard to the list of appeals thereat, they shall consider necessary.

Textual Amendments

F470 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 43**

F471 Words in s. 243 substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(17)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

[[F472]244 Abandonment of appeal.

(1) An appellant may abandon his appeal by lodging with the Clerk of Justiciary a notice of abandonment in as nearly as may be the form prescribed by Act of Adjournal under this Act; and on such notice being lodged the appeal shall be deemed to have been dismissed by the court.

(2) A person who has appealed against both conviction and sentence **[**[F473](or as the case may be against both conviction and disposal or order)**]**may abandon the appeal in so far as it is against conviction and may proceed with it against sentence **[**[F474](or disposal or order)**]** alone.**]**

Textual Amendments

F472 S. 244 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 13, **Sch. 6 para. 6**

F473 Words in s. 244(2) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(6)(a)**

F474 Words in s. 244(2) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(6)(b)**

Changes to legislation: *Criminal Procedure (Scotland) Act 1975, Procedure prior to Trial is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Procedure at hearing

245 Quorum and sitting of High Court.

(1) **[**F475Subject to subsection (1A) below,**]**For the purpose of hearing and determining any appeal **[**F476under this Part of this Act or any proceeding connected therewith**]** three of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and the determination of any question under this Part of this Act by the court shall be according to the votes of the majority of the members of the court sitting, including the presiding judge, and each judge so sitting shall be entitled to pronounce a separate opinion.

[F477(1A) For the purpose of hearing and determining any appeal under section 228(1)(b), (bb), (bc) or (bd) of this Act, or any proceeding connected therewith, two of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and each judge shall be entitled to pronounce a separate opinion; but where the two Lords Commissioners of Justiciary are unable to reach agreement on the disposal of the appeal, or where they consider it appropriate, the appeal shall be heard and determined in accordance with subsection (1) above.**]**

(2) The High Court shall hold both during session and during vacation such sittings for the disposal of appeals and other proceedings under this Part of this Act as may be necessary.

(3) The provisions of this section shall apply to cases certified to the High Court by a single judge of the said court and to appeals by way of advocation . . . F478 in like manner as they apply to appeals under this Part of this Act.

Textual Amendments

F475 Words in s. 245(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 43(1)(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F476 Words substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 13(1)**

F477 S. 245(1A) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 43(1)(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F478 Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 6, **Sch. 8**

F479246 . . . . . .

Textual Amendments

F479 S. 246 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 84, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

247 Powers which may be exercised by a single judge.

The powers of the High Court under this Part of this Act . . . F480, to extend the time within which **[**F481intimation of intention to appeal and note of appeal**]** . . . F480 may be given, to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave, and to admit an appellant to bail, may be exercised by any judge of the High Court in the same manner as they may be exercised by the

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High Court, and subject to the same provisions; but, if the judge refuses an application on the part of the appellant to exercise any such power in his favour, the appellant shall be entitled to have the application determined by the High Court.

Textual Amendments

F480 Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 6, **Sch. 8**

F481 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 15(b), **Sch. 6 para. 6**

248 Single judge may act wherever convenient.

A judge of the High Court sitting under the provisions of section 247 of this Act may sit and act wherever convenient.

249 Interlocutory proceedings.

Subject to the provisions of section 247 of this Act and without prejudice thereto, preliminary and interlocutory proceedings incidental to any appeal or application may be disposed of by a single judge.

250 Representation before single judge.

In all proceedings before a judge under section 247 of this Act, and in all preliminary and interlocutory proceedings and applications except such as are heard before the full court, the parties thereto may be represented and appear by a solicitor alone.

251 Appeal against refusal of application.

(1) When an application or applications have been dealt with by a judge of the High Court, under section 247 of this Act, the Clerk of Justiciary shall notify to the applicant the decision in the form set out in an Act of Adjournal under the [M54]Criminal Appeal (Scotland) Act 1926 or under this Act or as nearly as may be in such form.

(2) In the event of such judge refusing all or any of such applications, the Clerk of Justiciary on notifying such refusal to the applicant shall forward to him the prescribed form to fill up and forthwith return if he desires to have his said application or applications determined by the High Court as fully constituted for the hearing of appeals under this Part of this Act. If the applicant does not so desire, or does not return within five days to the Clerk the form duly filled up by him, the refusal of his application or applications by such judge shall be final.

(3) If the applicant desires a determination by the High Court as aforesaid and is not legally represented, he may be present at the hearing and determination by the High Court of his said application:

Provided that an applicant who is legally represented shall not be entitled to be present without leave of the court.

(4) When an applicant duly fills up and returns to the Clerk of Justiciary within the prescribed time the said form expressing a desire to be present at the hearing and determination by the court of the applications mentioned in this section, the said form shall be deemed to be an application by the applicant for leave to be so present, and

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the Clerk of Justiciary, on receiving the said form, shall take the necessary steps for placing the said application before the court.

(5) If the said application to be present is refused by the court, the Clerk of Justiciary shall notify the applicant; and if the said application is granted, he shall notify the applicant and the Governor of the prison wherein the applicant is in custody and the **[**F482Secretary of State**]**.

(6) For the purpose of constituting a Court of Appeal, the judge who has refused any such application may sit as a member of such court, and take part in determining such application.

Textual Amendments

F482 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 44**

Marginal Citations

M54 1926 c. 15**(39:1).**

[F483**252 Powers of High Court.**

Without prejudice to any existing power of the High Court, that court may for the purposes of an appeal under section 228(1) **[**F484or 228A**]**of this Act—

(a) order the production of any document or other thing connected with the proceedings;

(b) hear any additional evidence relevant to any alleged miscarriage of justice or order such evidence to be heard by a judge of the High Court or by such other person as it may appoint for that purpose;

(c) take account of any circumstances relevant to the case which were not before the trial judge;

(d) remit to any fit person to enquire and report in regard to any matter or circumstance affecting the appeal;

(e) appoint a person with expert knowledge to act as assessor to the High Court in any case where it appears to the court that such expert knowledge is required for the proper determination of the case.**]**

Textual Amendments

F483 S. 252 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 16, **Sch. 6 para. 6**

F484 Words in s. 252 inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(18)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

253 Evidence in court or on commission.

(1) The evidence of any witnesses ordered to be examined before the High Court or before any judge of the High Court or other person appointed by the High Court shall be taken in accordance with the existing law and practice as to the taking of evidence in criminal trials in Scotland. The appellant or applicant and the respondent or counsel on their behalf shall be entitled to be present at and take part in any examination of any witness to which this section relates.

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(2) F485

Textual Amendments

F485 Ss. 229, 232, 253(2) repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 6, **Sch. 8**

[F486 254 Disposal of appeals.

(1) The High Court may, subject to subsection (4) below, dispose of an appeal against conviction by—

(a) affirming the verdict of the trial court;

(b) setting aside the verdict of the trial court and either quashing the conviction or substituting therefor an amended verdict of guilty:

Provided that an amended verdict of guilty must be one which could have been returned on the indictment before the trial court; or

(c) setting aside the verdict of the trial court and granting authority to bring a new prosecution in accordance with section 255 of this Act.

(2) In setting aside, under subsection (1) above, a verdict the High Court may quash any sentence imposed on the appellant **[**F487(or as the case may be any disposal or order made)**]**as respects the indictment, and—

(a) in a case where it substitutes an amended verdict of guilty, whether or not the sentence **[**F488(or disposal or order)**]**related to the verdict set aside; or

(b) in any other case, where the sentence **[**F488(or disposal or order)**]**did not so relate,

may pass another (but not more severe) sentence **[**F489or make another (but not more severe) disposal or order**]**in substitution for the sentence **[**F490, disposal or order**]**so quashed.

(3) The High Court may, subject to subsection (4) below, dispose of an appeal against sentence by—

(a) affirming such sentence; or

(b) if the Court thinks that, having regard to all the circumstances, including any additional evidence such as is mentioned in section 228(2) of this Act, a different sentence should have been passed, quashing the sentence and passing another sentence whether more or less severe in substitution therefor.

(4) In relation to any appeal under section 228(1) of this Act, the High Court shall, where it appears to it that the appellant **[**F491(or disposal or order made)**]**committed the act charged against him but that he was insane when he did so, dispose of the appeal by—

(a) setting aside the verdict of the trial court and substituting therefor a verdict of acquittal on the ground of insanity; and

(b) quashing any sentence imposed on the appellant as respects the indictment **[**F492and- .

(i) making, in respect of the appellant, any order mentioned in section 174ZC(2)(a) to (d) of this Act; or

(ii) making no order.**]**

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[In subsection (3) above, "appeal against sentence" shall, without prejudice to the F493(4A) generality of the expression, be construed as including an appeal under section 228(1)(bb), (bc) or (bd), and any appeal under section 228A, of this Act; and other references to sentence in that subsection shall be construed accordingly.**]**

[Subsections (3) and (4) of section 174ZC of this Act shall apply to an order made F494(5) under subsection (4)(b)(i) above as they apply to an order made under subsection (2) of that section.**]]**

Textual Amendments

F486 S. 254 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 18, **Sch. 6 para. 6**

F487 Words in s. 254(2) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(7)(a)(i)**

F488 Words in s. 254(2)(a)(b) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(7)(a)(ii)**

F489 Words in s. 254(2) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(7)(a)(iii)**

F490 Words in s. 254(2) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(7)(a)(iv)**

F491 Words in s. 254(4) inserted (27.7.1993) by 1993 c. 36, s. 79(13), Sch, **5** Pt. I para. 2(7)(b)

F492 Words in s. 254(4)(b) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 85(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F493 S. 254(4A) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(7)(c)**

F494 S. 254(5) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 85(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Modifications etc. (not altering text)

C30 S. 254(3) extended (1.10.1993) by 1993 c. 9, **ss. 5**, 6, 10, 16(6) (with ss. 5(1), 6(1), 10, 27, 47(2), Sch. 6 paras. 1, 2, 6, 7); S.I. 1993/2050, **art. 3(4)**

[F495 254A Sentencing guidelines.

(1) In disposing of an appeal under section 228(1)(b), (bb), (bc), (bd) or (c) or 228A of this Act the High Court may, without prejudice to any other power in that regard, pronounce an opinion on the sentence or other disposal or order which is appropriate in any similar case.

(2) Without prejudice to any rule of law, a court in passing sentence shall have regard to any relevant opinion pronounced under subsection (1) above.**]**

Textual Amendments

F495 S. 254A inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 34(1)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F496 254B Convictions not to be quashed on certain grounds.

No conviction, sentence, judgment, order of court or other proceeding whatsoever in or for the purposes of solemn proceedings under this Act—

(a) shall be quashed for want of form; or

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(b) where the accused had legal assistance in his defence, shall be suspended or set aside in respect of any objections to—

(i) the relevancy of the indictment, or the want of specification therein; or

(ii) the competency or admission or rejection of evidence at the trial in the inferior court,

unless such objections were timeously stated.**]**

Textual Amendments

F496 S. 254B inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 86**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F497255 Supplementary provisions where High Court authorises new prosecution.

(1) **[**F498Subject to subsection (1A) below,**]**Where authority is granted under section 254(1)(c) of this Act, a new prosecution may be brought charging the accused with the same or any similar offence arising out of the same facts; and the proceedings out of which the appeal arose shall not be a bar to such new prosecution:

Provided that no sentence may be passed on conviction under the new prosecution which could not have been passed on conviction under the earlier proceedings.

[F499(1A) In a new prosecution under this section the accused shall not be charged with an offence more serious than that of which he was convicted in the earlier proceedings.

(1B) In proceedings in a new prosecution under this section it shall, subject to subsection (1C) below, be competent for either party to lead any evidence which it was competent for him to lead in the earlier proceedings.

(1C) The indictment in a new prosecution under this section shall identify any matters as respects which the prosecutor intends to lead evidence by virtue of subsection (1B) above which would not have been competent but for that subsection.**]**

(2) A new prosecution may be brought under this section, notwithstanding that any time limit (other than the time limit mentioned in subsection (3) below), for the commencement of such proceedings has elapsed.

(3) Proceedings in a prosecution under this section shall be commenced within two months of the date on which authority to bring the prosecution was granted; and for the purposes of this subsection proceedings shall, in a case where such warrant is executed without unreasonable delay, be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted, and shall in any other case be deemed to be commenced on the date on which the warrant is executed.

(4) Where the two months mentioned in subsection (3) above elapse and no new prosecution has been brought under this section, the order under section 254(1)(c) of this Act setting aside the verdict shall have the effect, for all purposes, of an acquittal.**]**

[F500(5) On granting authority under section 254(1)(c) of this Act to bring a new prosecution, the High Court shall, after giving the parties an opportunity of being heard, order the detention of the accused person in custody or admit him to bail.

(6) Subsections (2)(b) and (4) to (6) of section 101 of this Act (prevention of delay in trials) shall apply to an accused person who is detained under subsection (5) above as

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they apply to an accused person detained by virtue of being committed until liberated in due course of law.**]**

Textual Amendments

F497 S. 255 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 19, **Sch. 6 para. 6**

F498 Words in s. 255(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 46(1)(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F499 S. 255(1A)-(1C) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 46(1)(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F500 S. 255(5)(6) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 46(1)(c)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F501256 . . . . . .

Textual Amendments

F501 S. 256 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 87, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

257 Failure to appear at hearing.

[F502Where—

(a) intimation of the diet appointed for the hearing of an appeal has been made to the appellant;

(b) no appearance is made by or on behalf of the appellant at the diet; and

(c)**]**

no case or argument in writing has been timeously lodged, the High Court shall dispose of the appeal F503. . . as if it had been abandoned.

Textual Amendments

F502 Words in s. 257 substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 88**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F503 Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 6, **Sch. 8**

258 Appellant may be sentenced in absence.

The power of the High Court to pass any sentence under this Part of this Act may be exercised notwithstanding that the appellant **[**F504(or, where the Lord Advocate is the appellant, the convicted person)**]**is for any reason not present.

Textual Amendments

F504 Words in s. 258 inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(19)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

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[F505]259 . . . . . .

Textual Amendments

F505 S. 259 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 89, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

260 Notice of decision of court on application.

When the High Court has heard and dealt with any application under this Part of this Act, the Clerk of Justiciary shall (unless it appears to him unnecessary so to do) give to the applicant (if he is in custody and has not been present at the hearing of such application) notice of the decision of the court in relation to the said application.

261 Notice of determination of appeal.

On the final determination of any appeal under this Part of this Act or of any matter under section 247 of this Act, the Clerk of Justiciary shall give notice of such determination to the appellant or applicant **[**[F506](or, where the Lord Advocate is the appellant, the convicted person)**]**if he is in custody and has not been present at such final determination, to the clerk of the court in which the conviction took place, and to the **[**[F507]Secretary of State**]**.

Textual Amendments

F506 Words in s. 261 inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(20)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

F507 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 45**

262 Finality of proceedings.

Subject to the provisions of the next following section of this Act, all interlocutors and sentences pronounced by the High Court under this Part of this Act shall be final and conclusive and not subject to review by any court whatsoever and it shall be incompetent to stay or suspend any execution or diligence issuing from the High Court under this Part of this Act.

Further provisions as to appeals

263 Prerogative of mercy.

(1) Nothing in this Part of this Act shall affect the prerogative of mercy, but the Secretary of State on the consideration of any conviction of a person or the sentence (other than sentence of death) passed on a person who has been convicted, may, if he thinks fit, at any time, and whether or not an appeal . . . [F508] against such conviction or sentence has previously been heard and determined by the High Court **[**[F509]refer the whole case to the High Court and the case shall be heard and determined, subject to any directions the High Court may make, as if it were an appeal under this Part of this Act.**]**

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(2) The power of the Secretary of State under this section to refer to the High Court the case . . . [F510] of a person convicted shall be exercisable whether or not that person has petitioned for the exercise of Her Majesty's mercy.

[[F511](3) This section shall apply in relation to a finding under section 174ZA(2) and an order under section 174ZC(2) of this Act as it applies, respectively, in relation to a conviction and a sentence.**]**

Textual Amendments

F508 Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 6, **Sch. 8**

F509 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 22(b), **Sch. 6 para. 6**

F510 Words repealed by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(2), **Sch. 2**

F511 S. 263(3) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 90**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[[F512]263A Lord Advocate's reference.

(1) Where a person tried on indictment is acquitted **[**[F513]or convicted**]**of a charge, the Lord Advocate may refer a point of law which has arisen in relation to that charge to the High Court for their opinion; and the Clerk of Justiciary shall send to the person and to any solicitor who acted for the person at the trial, a copy of the reference and intimation of the date fixed by the court for a hearing.

(2) The person may, not later than seven days before the date so fixed, intimate in writing to the Clerk of Justiciary and to the Lord Advocate either—

(a) that he elects to appear personally at the hearing; or

(b) that he elects to be represented thereat by counsel;

but, except by leave of the Court on cause shown, (and without prejudice to his right to attend), he shall not appear or be represented at the hearing other than by and in conformity with an election under this subsection.

(3) Where there is no intimation under subsection (2)(b) above, the High Court shall appoint counsel to act at the hearing as *amicus curiae.*

(4) The costs of representation elected under subsection (2)(b) above or of an appointment under subsection (3) above shall, after being taxed by the Auditor of the Court of Session, be paid by the Lord Advocate.

(5) The opinion on the point referred under subsection (1) above shall not affect the acquittal **[**[F514]or, as the case may be, conviction**]**in the trial.**]**

Textual Amendments

F512 S. 263A inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 37, **Sch. 6 para. 6**

F513 Words in s. 263A(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 91(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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F514 Words in s. 263A(5) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 91(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

264 Disqualification, forfeiture, etc.

(1) Where, upon conviction of any person, any disqualification, forfeiture or disability attaches to such person by reason of such conviction, such disqualification, forfeiture or disability shall not attach for the period of **[**F515**[**F516four**]** weeks**]** from the date of the verdict against such person nor, in the event of **[**F515an intimation of intention to appeal (or in the case of an appeal under section 228(1)(b) **[**F517, (bb), (bc) or (bd)**][**F518or 228A**]**of this Act a note of appeal)**]** being lodged under this Part of this Act, until **[**F515such appeal, if it is proceeded with, is determined**]**.

(2) Where, upon a conviction, any property, matters or things which are the subject of the prosecution or connected therewith are to be or may be ordered to be destroyed or forfeited, the destruction or forfeiture or the operation of any order for destruction or forfeiture thereof shall be suspended for the period of **[**F515**[**F516four**]** weeks**]** after the date of the verdict in the trial, and, in the event of **[**F515an intimation of intention to appeal (or in the case of an appeal under section 228(1)(b) **[**F517, (bb), (bc) or (bd)**][**F518or 228A**]**of this Act a note of appeal)**]** being lodged under this Part of this Act, shall be further suspended until **[**F515such appeal, if it is proceeded with, is determined**]**.

[F519(3) Subsections (1) and (2) above do not apply in respect of any disqualification, forfeiture or, as the case may be, destruction or forfeiture or order for destruction or forfeiture under or by virtue of any enactment which contains express provision for the suspension of such disqualification, forfeiture or, as the case may be, destruction or forfeiture or order for destruction or forfeiture pending the determination of any appeal against conviction or sentence.**]**

[F520(4) Where, upon conviction, a fine has been imposed on a person or a compensation order has been made against him under section 58 of the Criminal Justice (Scotland) Act 1980, then, for a period of four weeks from the date of the verdict against such person or, in the event of an intimation of intention to appeal (or in the case of an appeal under section 228(1)(b), (bb), (bc) or (bd) or 228A of this Act a note of appeal) being lodged under this Part of this Act, until such appeal, if it is proceeded with, is determined,—

(a) the fine or compensation order shall not be enforced against that person and he shall not be liable to make any payment in respect of the fine or compensation order; and

(b) any money paid by that person under the compensation order shall not be paid by the clerk of court to the person entitled to it under section 60(1) of the Act of 1980.**]**

Textual Amendments

F515 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 23, **Sch. 6 para. 6**

F516 Words in s. 264(1)(2) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(21)(a)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

F517 Words in s. 264(1)(2) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 92(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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F518 Words in s. 264(1)(2) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(21)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)
F519 S. 264(3) inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a)**, 68(2)
F520 S. 264(4) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 92(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

265 Fines and caution.

(1) Where a person has on conviction been sentenced to payment of a fine and in default of payment to imprisonment, the person lawfully authorised to receive such fine shall, on receiving the same, retain it until the determination of any appeal in relation **[**F521to the conviction or sentence**]**.

(2) If a person sentenced to payment of a fine remains in custody in default of payment of the fine he shall be deemed, for the purposes of this Part of this Act, to be a person sentenced to imprisonment.

F522(3) . . . . . .

(4) An appellant who has been sentenced to the payment of a fine, and has paid the same in accordance with such sentence, shall, in the event of his appeal being successful, be entitled, subject to any order of the High Court, to the return of the sum or any part thereof so paid to him.

[F523(4A) A convicted person who has been sentenced to the payment of a fine and has duly paid it shall, if an appeal against sentence by the Lord Advocate results in the sentence being quashed and no fine, or a lesser fine than that paid, being imposed, be entitled, subject to any order of the High Court, to the return of the sum paid or as the case may be to the return of the amount by which that sum exceeds the amount of the lesser fine.**]**

(5) . . . . . .

Textual Amendments

F521 Words in s. 265(1) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 93(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
F522 S. 265(3)(5) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 93(b), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
F523 S. 265(4A) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(22)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

266 Expenses.

On the hearing and determination of an appeal or any proceedings preliminary or incidental thereto under this Part of this Act no expenses shall be allowed on either side.

267 No fees exigible.

Save in so far as provided in this Part of this Act, no court fees, or other fees or expenses shall be exigible from or awarded against an appellant or applicant in respect of an

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appeal or application under any of the provisions contained in sections 228 to 279 of this Act.

268 Reckoning of time spent pending appeal.

[F524(1) Subject to subsection (2) below, where **[**F525a convicted person**]**is admitted to bail under section 238 of this Act the period beginning with the date of his admission to bail and ending on the date of his readmission to prison in consequence of the determination or abandonment of his appeal **[**F526, or as the case may be of any **[**F527relevant appeal by the Lord Advocate under section 228A of this Act**]**,**]**shall not be reckoned as part of any term of imprisonment under **[**F525that**]** sentence.**]**

[F528(2) The time (including any period consequent on the recall of bail) during which a convicted person is in custody pending the determination of his appeal, or as the case may be of any **[**F527relevant appeal by the Lord Advocate under section 228A of this Act**]]**, shall subject to any direction which the High Court may give to the contrary be reckoned as part of any term of imprisonment under that sentence.

[F529(3) Subject to any direction which the High Court may give to the contrary, imprisonment of an appellant **[**F530(or, where the appellant is the Lord Advocate, of a convicted person)**]**—

(a) who is in custody in consequence of the conviction or sentence appealed against shall be deemed to run as from the date on which the sentence was passed;

(b) who is in custody other than in consequence of such conviction or sentence shall be deemed to run or to be resumed as from the date on which his appeal was determined or abandoned;

(c) who is not in custody shall be deemed to run or to be resumed as from the date on which he is received into prison under the sentence.**]**

(4) In this section references to a prison and imprisonment shall include respectively references to a **[**F531young offenders institution**]**, detention centre or place of safety **[**F532or, as respects a child sentenced to be detained under section 206 of this Act, the place directed by the Secretary of State**]** and to detention in such institution, centre or place of safety **[**F533or, as respects such a child, place directed by the Secretary of State**]**, and any reference to a sentence shall be construed as a reference to a sentence passed by the court imposing sentence or by the High Court on appeal as the case may require.

Textual Amendments

F524 S. 268(1) substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF, 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 14(1)**

F525 Words in s. 268(1) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(23)(a)(i)(iii)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

F526 Words in s. 268(1) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(23)(a)(ii)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

F527 Words in s. 268(1)(2) substituted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(8)**

F528 S. 268(2) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(23)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

F529 S. 268(3) by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 14(3)**

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F530 Words in s. 268(3) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(23)(c)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

F531 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 46** and S.I. 1983/1580, **art. 3**

F532 Words in s. 268(4) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 94(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F533 Words in s. 268(4) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 94(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

269 Extract convictions.

No extract conviction shall be issued during the period of **[**F534**[**F535four**]** weeks**]** after the actual day on which such conviction took place, save in so far as the same may be required as a warrant for the detention of the person convicted under any sentence which shall have been pronounced against him nor, in the event of **[**F534an intimation of intention to appeal (or in the case of an appeal under section 228(1)(b) **[**F536, (bb), (bc), or (bd)**][**F537or 228A**]**of this Act a note of appeal)**]** being lodged under this Part of this Act, until **[**F534such appeal, if it is proceeded with, is determined**]**.

Textual Amendments

F534 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 25, **Sch. 6 para. 6**

F535 Word in s. 269 substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(24)(a)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

F536 Words in s. 269 inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 95**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F537 Words in s. 269 inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(24)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

270 Custody of trial documents, etc.

(1) Any document, production or other thing lodged in connection with the proceedings on the trial of any person who, if convicted, is entitled or may be authorised to appeal under this Part of this Act, shall, in accordance with the provisions of this section, be kept in the custody of the court in which the conviction took place.

(2) **[**F538Until any period allowed under or by virtue of this Part of this Act for lodging intimation of intention to appeal F539. . . has elapsed, all documents and other productions produced at the trial of a convicted person shall be kept**]**in the custody of the court of trial in such manner as it may direct, and, failing direction, such custody shall be in the hands of the sheriff clerk of the district of the court of the second diet to whom the clerk of court shall hand them over at the close of the trial, unless otherwise ordered by the High Court on **[**F540an intimation of intention to appeal**]**. . .being lodged, and if within such period F541. . . **[**F540there has been such lodgement**]** under this Part of this Act, they shall be so kept until the **[**F540appeal, if it is proceeded with, is determined**]**:

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Provided that the judge of the court in which the conviction took place may, on cause shown, grant an order authorising any of such documents or productions to be released on such conditions as to custody and return as he may deem it proper to prescribe.

(3) All such documents or other productions so retained in custody or released and returned shall, under supervision of the custodian thereof, be made available for inspection and for the purpose of making copies of documents or productions to **[**F542a person who has lodged an intimation of intention to appeal F543. . . **]**or **[**F544, as the case may be, to the convicted person's**]** counsel or agent, and to the Crown Agent and the procurator-fiscal or his deputes.

(4) In case no **[**F545intimation of intention to appeal F546. . .is lodged within **[**F547the period mentioned in subsection (2) above**]**, all such documents and productions shall be dealt with as they are in use to be dealt with according to the existing law and practice at the conclusion of a trial **[**F548; and they shall be so dealt with if, there having been such intimation, the appeal is not proceeded with.**]]**

Textual Amendments

F538 Words in s. 270(2) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(25)(a)(i)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

F539 Words in s. 270(2) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 96(a), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F540 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 26(a), **Sch. 6 para. 6**

F541 Words in s. 270(2) repealed (1.10.1993) by 1993 c. 8, s. 47(1)(3), Sch. 5 para. 1(25)(a)(iii), **Sch. 7 Pt. I**; S.I. 1993/2050, **arts. 3(4)**, 10(b)

F542 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 26(b), **Sch. 6 para. 6**

F543 Words in s. 270(3) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 96(b), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F544 Words in s. 270(3) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(25)(b)(ii)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

F545 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 26(c), **Sch. 6 para. 6**

F546 Words in s. 270(4) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 96(4), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F547 Words in s. 270(4) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 25(c)(ii)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

F548 Words added by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 26(c), **Sch. 6 para. 6**

271 Clerk of Justiciary to furnish forms, etc.

The Clerk of Justiciary shall furnish the necessary forms and instructions in relation to **[**F549intimations of intention to appeal, notes of appeal**]** or notices of application under this Part of this Act to any person who demands the same, and to officers of courts, governors of prisons, and such other officers or persons as he thinks fit, and the governor of a prison shall cause those forms and instructions to be placed at the

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disposal of prisoners desiring to appeal or to make any application under this Part of this Act, and **[**[F550], if any prisoner in his custody so requests, shall cause any such intimation, note or notice given by that prisoner to be forwarded on the prisoner's behalf to the Clerk of Justiciary**]**.

Textual Amendments

F549 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 27, **Sch. 6 para. 6**

F550 Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 39:1), **Sch. 2 para. 19**

[F551]272 . . . . . .

Textual Amendments

F551 S. 272 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 97, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F552]273 . . . . . .

Textual Amendments

F552 S. 273 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 97, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[274 [F553]Record of trial.

(1) The proceedings at the trial of any person who, if convicted, is entitled to appeal under this Part of this Act shall be recorded by means of shorthand notes or by mechanical means.

(2) A shorthand writer shall—

(a) sign the shorthand notes taken by him of such proceedings and certify them as being complete and correct; and

(b) retain the notes.

(3) A person recording such proceedings by mechanical means shall—

(a) certify that the record is true and complete;

(b) specify in the certificate the proceedings (or, as the case may be, the part of the proceedings) to which the record relates; and

(c) retain the record.

(4) The cost of making a record under subsection (1) above shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of money provided by Parliament.

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(5) In subsection (1) above "proceedings at the trial" means the whole proceedings including (without prejudice to that generality)—

(a) discussions—

(i) on any objection to the relevancy of the indictment;

(ii) with respect to any challenge of jurors; and

(iii) on all questions arising in the course of the trial;

(b) the decision of the court on any matter referred to in paragraph (a) above;

(c) the evidence led at the trial;

(d) any statement made by or on behalf of the accused whether before or after the verdict;

(e) the **[**F554 judge's charge to the jury**]**;

(f) the speeches of counsel or agent;

(g) the verdict of the jury; and

(h) the sentence by the judge.

Textual Amendments

F553 S. 274 substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(27)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 6

F554 Words in s. 274(5)(e) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 98**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[275 F555**Transcripts of record and documentary productions.**

(1) The Clerk of Justiciary may direct that a transcript of a record made under section 274(1) of this Act, or any part thereof, be made and delivered to him for the use of any judge.

(2) Subject to subsection (3) below, the Clerk of Justiciary shall, if he is requested to do so by—

(a) the Secretary of State; or

(b) any other person on payment of such charges as may be fixed for the time being by the Treasury,

direct that such a transcript be made and sent to the person who requested it.

(3) The Secretary of State may, after consultation with the Lord Justice General, by order made by statutory instrument provide that in any class of proceedings specified in the order the Clerk of Justiciary shall only make a direction under subsection (2)(b) above if satisfied that the person requesting the transcript is of a class of person so specified and, if purposes for which the transcript may be used are so specified, intends to use it only for such a purpose; and different purposes may be so specified for different classes of proceedings or classes of person.

(4) Where subsection (3) above applies as respects a direction, the person to whom the transcript is sent shall, if purposes for which that transcript may be used are specified by virtue of that subsection, use it only for such a purpose.

(5) A statutory instrument containing an order under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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(6) A direction under subsection (1) or (2) above may require that the transcript be made by the person who made the record or by such competent person as may be specified in the direction; and that person shall comply with the direction.

(7) A transcript made in compliance with a direction under subsection (1) or (2) above—

(a) shall be in legible form; and

(b) shall be certified by the person making it as being a correct and complete transcript of the whole or, as the case may be, the part of the record purporting to have been made and certified, and in the case of shorthand notes signed, by the person who made the record.

(8) The cost of making a transcript in compliance with a direction under subsection (1) or (2)(a) above shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of money provided by Parliament.

(9) The Clerk of Justiciary shall, on payment of such charges as may be fixed for the time being by the Treasury, provide a copy of any documentary production lodged in connection with an appeal under this Part of this Act to such of the following persons as may request it—

(a) the prosecutor;

(b) any person convicted in the proceedings;

(c) any other person named in, or immediately affected by, any order made in the proceedings; and

(d) any person authorised to act on behalf of any of the persons mentioned in paragraphs (a) to (c) above.**]**

Textual Amendments

F555 S. 275 substituted (18.8.1993 only for the purpose of enabling an Order to be made under s. 275(3) so as to come into force on or after 1.10.1993 and 1.10.1993 with application in respect of any request made on or after 1.10.1993 for a transcript to be made of the proceedings at any trial, whether that trial commenced before or after that date) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(27)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(2)(4), 7, **Sch. 1**

[F556]276 . . . . . .

Textual Amendments

F556 S. 276 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 99, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

277 Non-compliance with certain provisions may be waived.

(1) Non-compliance with the provisions of this Act set out in subsection (2) of this section, or with any rule of practice for the time being in force under this Part of this Act (other than section 280 of this Act) relating to appeals . . . [F557], shall not prevent the further prosecution of an appeal . . . [F557] if the High Court or a judge thereof consider it just and proper that such non-compliance be waived or remedied by amendment or otherwise. The High Court or a judge thereof may, in such manner as they or he think fit, direct

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the remedy of such non-compliance, and upon the same being remedied accordingly the appeal . . . [F557] shall proceed.

(2) The provisions of this Act referred to in subsection (1) of this section are:—

. . .	section 249
. . .	section 250
. . .	section 251
section 234	section 253
section 235	section 257
section 236	[F558]
	. . .
[F559]s ection 236]B	section 260
[F558]	section 261
. . .	
[F558]	section 264
. . .	
section 239	section 265
section 241	section 267
section 242	section 269
[F560]242A]	
section 243	section 270
section 244	[F558]
	. . .
[F558]	[F558]
. . .	. . .
section 248	section 275.

Textual Amendments

F557 Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 6, **Sch. 8**

F558 Words in s. 277(2) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1996 c. 20, s. 117, Sch. 6 Pt. I para. 100, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F559 Words added by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 31(c), **Sch. 6 para. 6**

F560 Entry in s. 277(2) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(29)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

278 Forms of procedure may be varied.

The Clerk of Justiciary may, with the sanction of the Lord Justice General and the Lord Justice Clerk, vary the forms set out in an Act of Adjournal under the [M55]Criminal

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Appeal (Scotland) Act 1926 or under this Act from time to time as may be found necessary for giving effect to the provisions of this Part of this Act.

Marginal Citations

M55 1926 c. 15**(39:1).**

279 Interpretation of sections 228 to 278 of this Act.

In sections 228 to 278 of this Act, unless the context otherwise requires—

"appellant" includes a person who has been convicted and desires to appeal under this Part of this Act;

"sentence" includes any order of the High Court made on conviction with reference to the person convicted or his wife or children, and any recommendation of the High Court as to the making of a deportation order in the case of a person convicted and the power of the High Court to pass a sentence includes a power to make any such order of the court or recommendation, and a recommendation so made by the High Court shall have the same effect for the purposes of Articles 20 and 21 of the Aliens Order 1953 as the certificate and recommendation of the convicting court.

280 Appeals against hospital orders, etc.

Where a hospital order, **[**[F561]interim hospital order (but not a renewal thereof),**]** guardianship order or an order restricting discharge has been made by a court in respect of a person charged or brought before it, he may, without prejudice to any other form of appeal under any rule of law **[**[F562]or, where an interim hospital order has been made, to any right of appeal against any other order or sentence which may be imposed)**]**, appeal against that order in the same manner as against **[**[F563]sentence**]**.

Textual Amendments

F561 Words inserted by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), **s. 34** (b)(i) and Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **s. 126(2)(b)**

F562 Words inserted by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), **s. 34(b)(ii)** and Mental Health (Scotland) Act 1984 (c. 36, s. 126(2)(b)

F563 Word substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 32, **Sch. 6 para. 6**

[[F564]280A Prosecution appeal by bill of advocation.

(1) Without prejudice to section 76A of this Act, the prosecutor's right to bring a decision under review of the High Court by way of bill of advocation in accordance with existing law and practice shall extend to the review of a decision of any court of solemn jurisdiction.

(2) Where a decision to which a bill of advocation relates is reversed on the review of the decision the prosecutor may, whether or not there has already been a trial diet at which evidence has been led, proceed against the accused by serving him with an indictment containing the charge or charges which were affected by the decision (the wording of

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which charge or charges shall be as it was immediately before the decision appealed against).**]**

Textual Amendments

F564 S. 280A inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 35, **Sch. 6 para. 6**

Miscellaneous

281 High Court proceedings final.

All interlocutors and sentences pronounced by the High Court under the authority of this Part of this Act shall be final and conclusive, and not subject to review by any court whatsoever, and it shall be incompetent to stay or suspend any execution or diligence issuing forth of the High Court under the authority of the same.

F565 282 . . . . . .

Textual Amendments

F565 S. 282 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 101, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[F566 282A Right of audience of solicitor before the High Court.

Without prejudice to section 250 of this Act, any solicitor who has, by virtue of section 25A (rights of audience) of the M56 Solicitors (Scotland) Act 1980 a right of audience in relation to the High Court of Justiciary shall have the same right of audience in that court as is enjoyed by an advocate.**]**

Textual Amendments

F566 Ss. 282A, 282B inserted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 74(1), **Sch. 8 para. 27(2)**; S.I. 1991/1252, art. 3, **Sch. 1**

Marginal Citations

M56 1980 c.46**(76:2).**

[F567 282B Further provision as to rights of audience.

Any person who has complied with the terms of a scheme approved under section 26 of the M57 Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (consideration of applications made under section 25) shall have such rights of audience before the High Court of Justiciary as may be specified in an Act of Adjournal made under subsection (7)(b) of that section.**]**

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Textual Amendments

F567 Ss. 282A, 282B inserted (3.6.1991) by Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 (c. 40, SIF 39:1), s. 74(1), Sch. 8 para. 27(2); S.I. 1991/1252, art. 3, **Sch. 1**

Marginal Citations

M57 1990 c.40**(39:1).**

Changes to legislation:
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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

– Act certain function transferred. by 1994 c. 39 s. 127(1)128

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

– s. 168(c)(ii) amended (prosp.) by 1995 c. 36 s. 105(4)Sch. 4 para. 24(6)(b)
– s. 364(c)(ii) amended (prosp.) by 1995 c. 36 s. 105(4)Sch. 4 para. 24(14)(b)
– s. 413(3) (defn.of "the appropriate local authority") para. (a)(b) amended by 1994 c. 39 Sch. 13 para. 97(5)
– s. 413(3) (defns. of "care" and "the 1968 Act") repealed (prosp.) by 1995 c. 36 s. 105(4)(5)Sch. 4 para. 24(17)(b)(i)Sch. 5
– s. 462 (defns. of "child" "children's hearing" "place of safety" "residential establishment" and "supervision requirement") amended (prosp.) by 1995 c. 36 s. 105(4)Sch. 4 para. 24(18)
– s. 462 (defns. of "crime" and "prosecutor") applied (prosp.) by 1995 c. 36 s. 53(7)