



# Criminal Procedure (Scotland) Act 1975

## 1975 CHAPTER 21

### PART I

#### SOLEMN PROCEDURE

##### *The Indictment*

#### **41 Indictment forms**

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

#### **42 Procedure on resignation, death or removal of Lord Advocate**

All indictments which have been raised by any Lord Advocate shall continue in force and effect notwithstanding his resignation, and may be taken up and proceeded with by his successor; and where any Lord Advocate shall die during his tenure of office, or otherwise be removed from office, it shall be lawful to indict persons accused in name of the Solicitor General then in office until another Lord Advocate is appointed, and the advocates depute and procurators fiscal shall have power, notwithstanding such death or removal from office of the Lord Advocate, to take up and proceed with any indictments already raised in name of such Lord Advocate, and any indictments that may be raised in name of such Solicitor General.

#### **43 Naming of accused**

A person accused may be named and designed in an indictment according to the existing practice, or he may be named by the name given by him and designed as of

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

**44 Nomen juris unnecessary**

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

**45 Case of two or more persons charged**

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

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

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

**47 " All which or part " implied**

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

**48 Qualifying words to be implied**

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

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

**49 Quotation of statutes unnecessary**

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

## **50 Latitude as to time and place**

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

(2) The latitude formerly in use to be taken in stating any place in such indictments by adding to the word

“at”, or to the word " in ", the words " or near ", or the words " or in the near neighbourhood thereof" or similar words, shall be implied in all statements of place where the actual place is not of the essence of the charge.

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

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

## **51 Latitude as to quantities, persons, things or modes**

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

“to the prosecutor unknown” or similar words, shall be implied in every case.

## **52 Description of buildings, goods, money or other property**

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

## **53 Description of persons, goods, etc.**

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

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

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

**55 Setting forth documents unnecessary**

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

**56 Declarations, etc. not averred**

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

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

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

**58 Authentication of alterations to indictment, etc.**

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

**59 Reset**

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

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

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

**61 Procedure where more than one crime charged**

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

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

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

**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.