



# Criminal Procedure (Scotland) Act 1975

## 1975 CHAPTER 21

### PART II

#### SUMMARY PROCEDURE

#### CONVICTION AND SENTENCE

##### *Fines*

#### **395 Provisions as to fines**

- (1) A court of summary jurisdiction in determining the amount of any fine to be imposed on an offender shall take into consideration, amongst other things, the means of the offender so far as known to the court.
- (2) Where a court of summary jurisdiction imposes a fine on an offender, the court may order him to be searched, and any money found on him on apprehension or when so searched or when taken to prison or to a detention centre in default of payment of the fine, may, unless the court otherwise directs, be applied towards payment of the fine, and the surplus if any shall be returned to him:

Provided that the money shall not be so applied if the court is satisfied that it does not belong to the person on whom it was found or that the loss of the money will be more injurious to his family than his imprisonment or detention.

- (3) When a court of summary jurisdiction, which has adjudged that a sum of money shall be paid by an offender, shall consider that any money found on the offender on apprehension, or after he has been searched by order of the court, should not be applied towards payment of such sum, the court shall make a direction in writing to that effect which shall be written on the extract of the sentence which imposes the fine before the same is issued by the clerk of the court.
- (4) An accused may make an application to such a court either orally or in writing, through the governor of the prison in whose custody he may be at the time, that any sum of

money which shall have been found on his person should not be applied in payment of the fine adjudged to be paid by him.

- (5) A person who alleges that any money found on the person of an offender is not the property of the offender, but belongs to such person, may apply to such court either orally or in writing for a direction that such money should not be applied in payment of the fine adjudged to be paid, and the court after enquiry may so direct.
- (6) A court of summary jurisdiction, which has adjudged that a sum of money shall be paid by an offender, may order the attendance in court of the offender, if he is in prison, for the purpose of ascertaining the ownership of money which shall have been found on his person.
- (7) A notice in the form, as nearly as may be, of the appropriate form contained in an Act of Adjournal under this Act, addressed to the governor of the prison in whose custody an offender may be at the time, signed by the judge of a court of summary jurisdiction shall be a sufficient warrant to the governor of such prison for conveying the offender to the court.

### **396 Time for payment**

- (1) Where a court of summary jurisdiction has imposed a fine on an offender or ordered him to find caution, the court shall, subject to the provisions of the next following subsection, allow him at least seven days to pay the fine or the first instalment thereof or, as the case may be, to find caution; and any reference in this and the next following section to a failure to pay a fine or other like expression shall include a reference to a failure to find caution.
- (2) If on the occasion of the imposition of a fine—
  - (a) the offender appears to the court to possess sufficient means to enable him to pay the fine forthwith; or
  - (b) on being asked by the court whether he wishes to have time for payment, he does not ask for time; or
  - (c) he fails to satisfy the court that he has a fixed abode; or
  - (d) the court is satisfied for any other special reason that no time should be allowed for payment,

the court may refuse him time to pay the fine and, if the offender fails to pay, may exercise its power to impose imprisonment and, if it does so, shall state the special reason for its decision.

- (3) In all cases where time is not allowed by a court of summary jurisdiction for payment of a fine, the reasons of the court for not so allowing time shall be stated in the extract of the finding and sentence as well as in the finding and sentence itself.
- (4) Where time is allowed for payment of a fine or payment by instalments is ordered, a court of summary jurisdiction shall not, on the occasion of the imposition of a fine, impose imprisonment in the event of a future default in paying the fine or an instalment thereof unless the offender is before it and the court determines that, having regard to the gravity of the offence or to the character of the offender, or to other special reason, it is expedient that he should be imprisoned without further inquiry in default of payment; and where a court so determines, it shall state the special reason for its decision.

- (5) Where a court of summary jurisdiction has imposed imprisonment in accordance with the provisions of the last forgoing subsection, then, if at any time the offender asks the court to commit him to prison, the court may do so notwithstanding subsection (1) of this section.
- (6) Nothing in the foregoing provisions of this section shall affect any power of a court of summary jurisdiction to order a fine to be recovered by civil diligence.
- (7) Where time has been allowed for payment of a fine imposed by a court of summary jurisdiction, the court may, subject to any rules under this Part of this Act, on an application by or on behalf of the offender, and after giving the prosecutor an opportunity of being heard, allow further time for payment.

### **397 Application for further time for payment of fine**

- (1) An application by an offender for further time in which to pay a fine adjudged to be paid by him by a court of summary jurisdiction, or of instalments thereof, shall be made to that court, except in a case where a transfer of fine order shall have been made under section 403 of this Act or under section 72A of the Magistrates' Courts Act 1952, in which case the application shall be made to the court specified in the transfer order, or to the court specified in the last transfer order where there is more than one transfer.
- (2) A court to which an application is made under the foregoing subsection shall allow further time for payment of the fine or of instalments thereof, unless it is satisfied that the failure of the offender to make payment has been wilful or that the offender has no reasonable prospect of being able to pay if further time is allowed.
- (3) An application made under this section to a court of summary jurisdiction may be made orally or in writing.

### **398 Restriction on imprisonment after fine or caution**

- (1) Where a court of summary jurisdiction has imposed a fine or ordered the finding of caution without imposing imprisonment in default of payment, it shall not impose imprisonment on an offender for failing to make payment of the fine, unless on an occasion subsequent to that sentence the court has enquired into his means in his presence ; but this subsection shall not apply where the offender is in prison.
- (2) A court of summary jurisdiction may, for the purpose of enabling enquiry to be made under this section—
  - (a) issue a citation requiring the offender to appear before the court at a time and place appointed in the citation ; or
  - (b) issue a warrant of apprehension.
- (3) On the failure of the offender to appear before the court in response to a citation under this section, the court may issue a warrant of apprehension.
- (4) A warrant of apprehension issued by a court of summary jurisdiction under subsection (2) of this section shall be in the form, as nearly as may be, of the appropriate form contained in an Act of Adjournal under this Act.
- (5) The minute of procedure in relation to an enquiry into the means of an offender under this section shall be in the form, as nearly as may be, of the appropriate form contained in an Act of Adjournal under this Act.

**399 Payment by instalments**

- (1) Without prejudice to the operation of section 396(2) of this Act, where a court of summary jurisdiction has imposed a fine on an offender, the court may, of its own accord or on the application of the offender, order payment of that fine by instalments of such amounts and at such time as it may think fit, and it shall be the duty of the court to inform the offender of his right to make an application as aforesaid.
- (2) Where any instalment is not paid by the time so ordered, the offender shall, subject to the provisions of the last foregoing section, be deemed to be in default of payment of a fine of the amount of the unpaid balance and dealt with accordingly, and where the court has already imposed imprisonment in default of payment the offender shall be liable to be imprisoned for a period that bears to the period of imprisonment so imposed the same proportion, as nearly as may be, as the amount of the unpaid balance bears to the total amount of the fine.

**400 Supervision pending payment of fine**

- (1) Where an offender has been allowed time for payment of a fine by a court of summary jurisdiction, the court may, either on the occasion of the imposition of the fine or on a subsequent occasion, order that he be placed under the supervision of such person as the court may from time to time appoint for the purpose of assisting and advising the offender in regard to payment of the fine.
- (2) An order made in pursuance of the foregoing subsection shall remain in force so long as the offender to whom it relates remains liable to pay the fine or any part of it unless the order ceases to have effect or is discharged under the next following subsection.
- (3) An order under this section shall cease to have effect on the making of a transfer of fine order under section 403 of this Act in respect of the fine or may be discharged by the court that made it without prejudice, in either case, to the making of a new order.
- (4) Where an offender under 21 years of age has been allowed time for payment of a fine by a court of summary jurisdiction, the court shall not order the form of detention appropriate to him in default of payment of the fine unless he has been placed under supervision in respect of the fine or the court is satisfied that it is impracticable to place him under supervision.
- (5) Where a court, being satisfied as aforesaid, orders the detention of a person under 21 years of age without an order under this section having been made, the court shall state the grounds on which it is so satisfied.
- (6) Where an order under this section is in force in respect of an offender, the court shall not impose imprisonment in default of the payment of the fine unless the court has, before so doing, taken such steps as may be reasonably practicable to obtain from the person appointed for the supervision of the payment of his fine a report, which may be oral, on the offender's conduct and means, and shall consider any report so obtained in addition, in a case where an enquiry is required by section 398 of this Act, to that enquiry.
- (7) When a court of summary jurisdiction shall have made an order under subsection (1) of this section placing an offender under the supervision of another person, a notice shall be sent by the clerk of the court to such offender in the form, as nearly as may be, of the appropriate form contained in an Act of Adjournal under this Act.

- (8) The person appointed to supervise such an offender shall communicate with him with a view to assisting and advising him in regard to payment of the fine, and unless the same or any instalment thereof shall have been paid to the clerk of the court within the time allowed by the court for payment, the person so appointed shall report to the court without delay after the expiry of such time, as to the conduct and means of the offender.

#### **401 Supplementary provisions as to payment of fine**

- (1) Where under the provisions of section 396 or 400 of this Act a court is required to state a special reason for its decision or the grounds on which it is satisfied that it is undesirable or impracticable to place an offender under supervision, the reason or, as the case may be, the grounds shall be entered in the record of the proceedings along with the finding and sentence.
- (2) Any reference in the sections last mentioned to imprisonment shall be construed, in the case of an offender on whom by reason of his age imprisonment may not lawfully be imposed, as a reference to the lawful form of detention in default of payment of a fine appropriate to that person, and any reference to prison shall be construed accordingly.

#### **402 Fines, etc., may be enforced in other district**

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

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

#### **403 Transfer of fine orders**

- (1) Where a court of summary jurisdiction has imposed a fine on a person convicted of an offence and it appears to the court that he is residing—
- (a) within the jurisdiction of another court of summary jurisdiction in Scotland, or
  - (b) in any petty sessions area in England and Wales,
- the court, if no term of imprisonment has been fixed by the court in default of payment of the fine, may order that payment of the fine shall be enforceable by that other court of summary jurisdiction or in that petty sessions area, as the case may be.
- (2) An order under this section (in this section referred to as a transfer of fine order) shall specify the court by which or the petty sessions area in which payment is to be enforceable and, where the court to be specified in a transfer of fine order is a court of summary jurisdiction, it shall, in any case where the order is made by the sheriff court, be a sheriff court.
- (3) Where a transfer of fine order is made with respect to any fine under this section, any functions under any enactment relating to that sum which, if no such order had been made, would have been exercisable by the court which made the order or by the clerk of that court shall cease to be so exercisable.

- (4) Where a transfer of fine order within the meaning of this section or of section 72A of the Magistrates' Courts Act 1952 specifies a court of summary jurisdiction in Scotland, that court and the clerk of that court shall have all the like functions under this Part of this Act in respect of the fine or the sum in respect of which that order was made (including the power to make any further order under this section) as if the fine or the sum were a fine imposed by that court and as if any order made under this section or the said Act of 1952 in respect of the fine or the sum before the making of the transfer of fine order had been made by that court:

Provided that for the purpose of determining the period of imprisonment which may be imposed under this Part of this Act by any court having jurisdiction in respect of a sum adjudged to be paid by a conviction of a magistrates' court acting for a petty sessions area, section 407 of this Act shall have effect as if for the Table set out in subsection (1) of that section there were substituted the Table set out in paragraph 1 of Schedule 3 to the said Act of 1952 or that Table as modified by paragraph 3 of that Schedule, as the case may be.

- (5) The power of a court of summary jurisdiction in Scotland to make a transfer of fine order under this section shall be exercisable in relation to a fine imposed on any person or a sum due from any person under a recognizance forfeited by the Crown Court the payment of which is enforceable by the court of summary jurisdiction, notwithstanding that the Crown Court has in pursuance of section 31 of the Powers of Criminal Courts Act 1973 fixed a term of imprisonment which that person is to undergo if the fine or other sum is not duly paid or recovered.
- (6) Where a transfer of fine order under section 72A of the Magistrates' Courts Act 1952 or this section provides for the enforcement by a sheriff court in Scotland of a fine imposed by the Crown Court, the proviso to subsection (4) of this section shall not apply, but the term of imprisonment which may be imposed under this Part of this Act shall be the term fixed in pursuance of section 31 of the Powers of Criminal Courts Act 1973 by the Crown Court or a term which bears the same proportion to the term so fixed as the amount of the fine remaining due bears to the amount of the fine imposed by that court, notwithstanding that the term exceeds the period applicable to the case under section 407 of this Act.

#### **404 Action of clerk of court on transfer of fine orders**

- (1) Where a court of summary jurisdiction makes a transfer of fine order under section 403 of this Act, the clerk of the court shall send to the clerk of the court specified in the order a notice in the form, as nearly as may be, of the appropriate form contained in an Act of Adjournal under this Act, and shall at the same time send to that clerk a statement of the offence of which the offender was convicted, and of the steps if any which shall have been taken to recover the fine, and shall give him such further information if any as, in his opinion, is likely to assist the court specified in the order in recovering the fine.
- (2) In the case of a further transfer of fine order the clerk of the court which shall have made the order shall send to the clerk of the court by which the fine was imposed a copy of the notice which shall have been sent to the clerk of the court specified in the order.
- (3) The clerk of the court specified in a transfer of fine order shall, as soon as may be after he has received the notice prescribed in subsection (1) of this section, send an

intimation to the offender in the form, as nearly as may be, of the appropriate form contained in an Act of Adjournal under this Act.

- (4) The clerk of the court specified in a transfer of fine order shall remit or otherwise account for any payment received in respect of the fine, to the clerk of the court by which the fine was imposed, and if the sentence shall have been enforced otherwise than by payment of the fine, he shall inform the clerk of that court how the sentence was enforced.

#### **405 Imprisonment in default of payment of fine**

Subject to the provisions of sections 396 to 401 of this Act, where a court of summary jurisdiction has imposed a fine on any person, the court may impose a period of imprisonment in default of payment thereof, whether or not the statute or order under which the fine is imposed makes any provision for its recovery, but that period shall not exceed the maximum period applicable to the fine under section 407 of this Act.

#### **406 Substitution of custody for imprisonment where a child defaults on fine**

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

#### **407 Period of imprisonment for non-payment of fine**

- (1) The maximum period of imprisonment that may be imposed in default of payment of any sum imposed by a court of summary jurisdiction as a fine or for failure to find caution shall be as follows:—

<i>Amount of sum imposed</i>	<i>Period of imprisonment</i>
Not exceeding £2	7 days
Exceeding £2 but not exceeding £5	14 days
Exceeding £5 but not exceeding £20	30 days
Exceeding £20 but not exceeding £50	60 days
Exceeding £50	90 days

- (2) If in any sentence or extract sentence the period of imprisonment inserted in default of payment of a fine or on failure to find caution is in excess of that competent under this Part of this Act, such period of imprisonment shall be reduced to the maximum period under this Part of this Act applicable to such default or failure, and the judge who pronounced the sentence shall have power to order the sentence or extract to be corrected accordingly.
- (3) The periods of imprisonment set forth in subsection (1) of this section shall apply to the non-payment of any sum imposed as aforesaid by a court of summary jurisdiction under a statute or order passed or made before the first day of June 1909, notwithstanding that that statute or order fixes any other period of imprisonment.

- (4) The provisions of this section shall be without prejudice to the operation of section 409 of this Act.

**408 Discharge from imprisonment to be specified**

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

**409 Payment of fine in part by prisoner**

- (1) Where a person committed to prison or otherwise detained for failure to pay a fine imposed by a court of summary jurisdiction pays to the governor of the prison, under conditions prescribed by rules made under the Prisons (Scotland) Act 1952, any sum in part satisfaction of the fine, the term of imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which the prisoner is sentenced as the sum so paid bears to the total amount of the fine.
- (2) In this section references to a prison and to the governor thereof shall include respectively references to any other place in which a person may be lawfully detained in default of payment of a fine, and to an officer in charge thereof.
- (3) Provision may be made by Act of Adjournment for the application of sums paid under this section and for any matter incidental thereto.
- (4) The provisions of Schedule 7 to this Act shall apply for the purposes of this section.

**410 Remission of fine where young offender detained**

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

**411 Recovery by civil diligence**

- (1) Where any fine falls to be recovered by civil diligence in pursuance of this Part of this Act or in any case in which a court of summary jurisdiction may think it expedient to order a fine to be recovered by civil diligence, there shall be added to the finding of the court imposing the fine the words " and decerns and ordains instant execution by arrestment and also execution to pass hereon by pointing the sale, after a charge of ten free days, " and such diligence, whatever the amount of the fine imposed, may be executed in the same manner as if the proceedings were on an extract decree of the sheriff small debt court.
- (2) Where proceedings by civil diligence under this section are adopted, imprisonment shall not thereafter be competent.
- (3) Proceedings by civil diligence under this section may be adopted at any time after the imposition of the fine to which they relate:



Provided that no such proceedings shall be authorised after the court has imposed imprisonment in default of payment of the fine.

**412 Payment of fines to be made to clerk of court**

All fines and expenses imposed under this Part of this Act shall be paid to the clerk of court to be accounted for by him to the person entitled thereto, and it shall not be necessary to specify in any sentence the person entitled to payment of any such fine or expenses, unless where it is necessary to provide for the division of the penalty.