

Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PART II

SUMMARY PROCEDURE

CONVICTION AND SENTENCE

Adjournment and remand

380 Power of court to adjourn case before sentence

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

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

381 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 shall remand him in custody or on bail for such period or periods, no single period exceeding three weeks, as the court thinks necessary to enable a medical examination and report to be made.
- (2) Where a person is remanded on bail under this section, bail shall be found by bail bond, and it shall be a condition of the bond that he shall—

- (a) undergo a medical examination by a duly qualified medical practitioner or, where the inquiry is into his mental condition and the bond so specifies, two such practitioners; and
- (b) for the purpose attend at an institution or place, or on any such practitioner specified in the bond 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 bond 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) Where a person remanded on bail under this section fails to comply with any such condition of the bond as is mentioned in the last foregoing subsection, the bail may be forfeited.
- (4) On exercising the powers conferred by this section the court shall—
 - (a) where the person is remanded in custody, send to the institution or place in which he is detained, and
 - (b) where the person is released on bail, send to the institution or place at which or the person by whom he is to be examined,

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

Admonition and discharge

382 Admonition

A court of summary jurisdiction may, if it appears to meet the justice of the case, dismiss with an admonition any person found guilty by the court of any offence.

383 Absolute discharge

Where a person is charged before a court of summary jurisdiction with an offence (other than an offence the sentence for which is fixed by law) and the court is satisfied that he committed the offence, the court, if it is of opinion, having regard to the circumstances, including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate may, without proceeding to conviction, make an order discharging him absolutely.

Probation

384 Probation

(1) Where a person is charged before a court of summary jurisdiction with an offence (other than an offence the sentence for which is fixed by law) and the court is satisfied that he committed the offence, the court, if it is of opinion having regard to the circumstances, including the nature of the offence and the character of the offender, that it is expedient to do so, may, without proceeding to conviction, make a probation

- order, that is to say an order requiring the offender to be under supervision for a period to be specified in the order of not less than one nor more than three years.
- (2) A probation order shall be 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 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 necessary for securing the good conduct of the offender or for preventing a repetition by him of the offence or the commission of other offences.
- (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.
- (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) or (5) of this section or under the next following section) and that if he fails to comply therewith or commits another offence during the probation period he will be liable to be convicted of and sentenced for the original offence 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 cause copies thereof to be given to the officer of the local authority who is to supervise the probationer, to the probationer, and to the person in charge of any institution or place in which the probationer is required to reside under the probation order.

385 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 section 27 of the Mental Health (Scotland) Act 1960, 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 Part V 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 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 Mental Health (Scotland) Act 1960, not being a State hospital within the meaning of that 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 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) While the probationer is under treatment as a resident patient in pursuance of a requirement of the probation order, any officer responsible for his supervision shall carry out the supervision to such extent only as may be necessary for the purpose of the discharge or amendment of the order.
- (5) Where the medical practitioner by whom or under whose direction a probationer is being treated for his mental condition in pursuance of a probation order is of opinion that part of the treatment can be better or more conveniently given in or at an institution or place not specified in the order, being an institution or place in or at which the treatment of the probationer will be given by or under the direction of a registered medical practitioner, he may, with the consent of the probationer, make arrangements for him to be treated accordingly; and the arrangements may provide for the probationer to receive part of his treatment as a resident patient in an institution or place notwithstanding that the institution or place is not one which could have been specified in that behalf in the probation order.
- (6) Where any such arrangements as are mentioned in the last foregoing subsection are made for the treatment of a probationer—
 - (a) the medical practitioner by whom the arrangements are made shall give notice in writing to any officer responsible for the supervision of the probationer, specifying the institution or place in or at which the treatment is to be carried out: and
 - (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the probation order.
- (7) Subsections (2), (3) and (4) of section 377 of this Act shall apply for the purposes of this section as if for the reference in the said subsection (2) to section 376(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.

386 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 387 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.

Failure to comply with requirement of probation order

- (1) If, on information on oath from the officer supervising the probationer, 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 foregoing subsection that he has failed to comply with any of the requirements of the probation order, the court may—
 - (a) without prejudice to the continuance in force of the probation order, impose a fine not exceeding £20; or
 - (b) (i) where the probationer has been convicted for the offence for which the order was made, sentence him for that offence;
 - (ii) where the probationer has not been so convicted, convict him and sentence him as aforesaid; or
 - (c) vary any of the requirements of the probation order, so however that any extension of the probation period shall terminate not later than three years from the date of the probation order.
- (3) 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 of 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 388 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.

388 Commission of further offence

(1) If it appears to the court by which a probation order has been made (or to the appropriate court) that the probationer to whom the order relates has been convicted by a court in any part of Great Britain of an offence committed during the probation period and has been dealt with for that offence, the first-mentioned court (or the appropriate court) may issue a warrant for the arrest of the probationer, or may, if it thinks fit, instead of issuing such a warrant in the first instance issue a citation requiring the

- probationer to appear before that court at such time as may be specified in the citation, and on his appearance or on his being brought before the court the court may, if it thinks fit, deal with him under section 387(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 387(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.

389 Probation orders relating to persons residing in England

- (1) Where the court by which a probation order is made under section 384 of this Act is satisfied that the offender has attained the age of 17 years 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; and that area shall be named in the order.
- (2) Where a probation order has been made under section 384 of this Act and the court in Scotland by which the order was made or the appropriate court is satisfied that the probationer has attained the age of 17 years and proposes to reside or is residing in England, 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; 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 385(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 385 and section 3(2) of the Powers 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 any such requirement by virtue of section 385 of this Act and section 3 of the said Act of 1973 respectively; and
 - (b) subsections (4) to (6) of section 3 of 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 386(1) and 387(1) of this Act shall not apply to any order made or amended under this section; but subject as hereinafter provided the provisions of the Powers of Criminal Courts Act 1973 (except section 8 of that Act) shall apply to the order as if it were a probation order made under section 2 of that Act:
 - Provided that section 6(2)(a), (3)(d) and (6) of that Act shall not apply to any such order and section 6(4) and (5) of that Act shall have effect respectively in relation to any such order as if for the first reference in section 6(4) to the Crown Court there were substituted a reference to a court in Scotland and as if for the second such reference therein and for both such references in section 6(5) there were substituted references

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

- (5) If it appears on information to a justice acting for the petty sessions area for which the supervising court within the meaning of the Powers of Criminal Courts Act 1973 acts that a person in whose case a probation order has been made or amended under this section has been convicted by a court in any part of Great Britain of an offence committed during the period specified in the order, he may issue a summons requiring that person to appear, at the place and time specified therein, before the court in Scotland by which the probation order was made or, if the information is in writing and on oath, may issue a warrant for his arrest, directing that person to be brought before the last-mentioned court.
- (6) If a warrant for the arrest of a probationer issued under section 388 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 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.

390 Further provisions as to probation orders

- (1) Where the court by which a probation order is made under section 384 of this Act or subsection (6) of this section is satisfied that the person to whom the order relates is under the age of 17 years and resides or will reside in England, subsection (2) of the said section 384 shall not apply to the order but the order shall name the petty sessions area in which that person resides or will reside and the court shall send notification of the order to the clerk to the justices for that area.
- (2) Where a probation order has been made under section 384 of this Act or subsection (6) of this section, and the court which made the order or the appropriate court is satisfied that the person to whom the order relates is under the age of 17 years and proposes to reside or is residing in England, the power of that court to amend the order under Schedule 5 to this Act shall include power, without summoning him and without his consent, to insert in the order the name of the petty sessions area aforesaid; and where the court exercises the power conferred on it by virtue of this subsection it shall send notification of the order to the clerk aforesaid.
- (3) A court which sends a notification to a clerk in pursuance of the foregoing provisions of this section shall send to him with it three copies of the probation order in question

and such other documents and information relating to the case as it considers likely to be of assistance to the juvenile court mentioned in the following subsection.

- (4) It shall be the duty of the clerk to whom a notification is sent in pursuance of the foregoing provisions of this section to refer the notification to a juvenile court acting for the petty sessions area named in the order, and on such a reference the court—
 - (a) may make a supervision order under the Children and Young Persons Act 1969 in respect of a person to whom the notification relates; and
 - (b) if it does not make such an order, shall dismiss the case.
- (5) A supervision order made by virtue of the last foregoing subsection shall not include a requirement authorised by section 12 of the said Act of 1969 unless the supervised person is before the court when the supervision order is made, and in relation to a supervision order made by virtue of that subsection—
 - (a) section 15 of that Act shall have effect as if, in subsection (4), paragraph (b) and the words following it were omitted; and
 - (b) section 17(a) of mat Act shall have effect as if the second reference to the supervision order were a reference to the probation order in consequence of which the supervision order is made;

and when a juvenile court disposes of a case referred to it in pursuance of the last foregoing subsection, the probation order in consequence of which the reference was made shall cease to have effect.

- (6) The court which, in pursuance of subsection (1) of section 73 of the Social Work (Scotland) Act 1968. considers a case referred to it in consequence of a notification under paragraph (b) of that subsection (which relates to a case in which a person subject to a supervision order made by virtue of this section moves to Scotland)—
 - (a) may, if it is of opinion that the person to whom the notification relates should continue to be under supervision, make a probation order in respect of him for a period specified in the order; and
 - (b) if it does not make such an order, shall dismiss the case;

and when the court disposes of a case in pursuance of this subsection the supervision order aforesaid shall cease to have effect.

- (7) Notwithstanding any provision to the contrary in section 384 of this Act, a probation order made by virtue of the last foregoing subsection which includes only requirements having the like effect as any requirement or provision of the supervision order to which the notification relates may be made without summoning the person to whom the notification relates and without his consent, and shall specify a period of supervision which shall expire not later than the date on which that supervision order would have ceased to have effect by the effluxion of time; and, except as aforesaid, the provisions of this Act shall apply to that probation order.
- (8) In this and the last foregoing section, "petty sessions area" has the same meaning as in the said Act of 1969.

391 Supplementary provisions as to probation

(1) Any court, on making a probation order, may, if it thinks that such a course is expedient for the purpose of the order, require the offender to give security for his good behaviour.

(2) Security may be given under the foregoing subsection by consignation with the clerk of the court or by entering into an undertaking to pay the amount, but not otherwise, and such security may be forfeited and recovered in like manner as caution.

392 Effects of probation and absolute discharge

(1) Subject as hereinafter provided, a conviction on indictment of an offence for which an order is made under Part I of this Act 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—
 - (a) any right of any such offender as aforesaid to appeal against his conviction; or
 - (b) the operation, in relation to any such offender, of any enactment which was in force as at the commencement of section 9(3)(b) of the Criminal Justice (Scotland) Act 1949 and is expressed to extend to persons dealt with under section 1(1) of the Probation of Offenders Act 1907 as well as to convicted persons.
- (4) Where an offender is placed on probation or discharged absolutely by a court of summary jurisdiction, he shall have the like right of appeal against the finding that he committed the offence as if that finding were a conviction.
- (5) Where a person charged with an offence has at any time previously been placed on probation or discharged absolutely in respect of the commission by him of an offence, it shall be competent, in the proceedings for that offence, to bring before the court the probation order or order of absolute discharge in like manner as if the order were a conviction.

393 Probation reports

Where a report by an officer of a local authority is made to any court (other than a court whose procedure is regulated by rules made under section 366(2) of this Act) with a view to assisting the court in determining the most suitable method of dealing with any person in respect of an offence, a copy of the report shall be given by the clerk of the court to the offender or his solicitor:

Provided that if the offender is under 16 years of age and is not represented by counsel or a solicitor, a copy of the report need not be given to him but shall be given to his parent or guardian if present in court.

Penalties for Statutory Offences

Power to mitigate penalties

In a summary prosecution for the contravention of any statute or order, where such 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.:—

- (a) to reduce the period of imprisonment:
- (b) to substitute a fine not exceeding £100 for imprisonment (either with or without caution for good behaviour, not exceeding the amount and the period competent under this Part of this Act):
- (c) to substitute the finding of caution as provided for in this Part of this Act for a fine or imprisonment:
- (d) to reduce the amount of any fine:
- (e) 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.

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 sessons 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

Amount of any impossed

(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:—

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Amount of sum imposea	Perioa oj imprisonment
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 Adjournal 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 poinding 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.

Residential and Borstal Training

413 Committal for residential training

Where a child charged summarily before the sheriff with an offence pleads guilty to, or is found guilty of, that offence the sheriff may order the child to be committed for such period not exceeding two years as may be specified in the order to such a place as the Secretary of State may direct for the purpose of undergoing residential training, and where such an order is made the child shall during that period be liable to be detained in that place subject to such conditions as the Secretary of State may direct.

414 Borstal training

- (1) Where a person who is not less than 16 but under 21 years of age is convicted of an offence punishable with imprisonment, and the court is satisfied having regard to his character and previous conduct, and to the circumstances of the offence, that it is expedient for his reformation and the prevention of crime that he should undergo a period of training in a Borstal institution, the court may, subject to subsection (5) of this section, pass a sentence of Borstal training in lieu of any other sentence.
- (2) Before a sentence of Borstal training is passed the court shall call for and consider a report on the offender's physical and mental condition and his suitability for such a sentence, which report it shall be the duty of the Secretary of State to cause to be furnished to the court.
- (3) If on consideration of a report furnished in pursuance of subsection (2) of this section the court, either ex proprio motu or on the application of either party, thinks it expedient to do so, it may require any person concerned in the preparation of the report or with knowledge of matters dealt with in the report to appear with a view to his examination on oath regarding any of the matters dealt with in the report, and such person may be examined or cross-examined accordingly.
- (4) A copy of any report furnished under subsection (2) of this section shall be given by the clerk of the court to the offender or his solicitor at least two clear days before the diet at which the sentence is to be passed.

(5) The power of a court to pass a sentence of Borstal training under subsection (1) of this section shall not be exercised in the case of any person on whom such a sentence has previously been imposed and who has served any part thereof.

Imprisonment, etc.

415 Restriction on imprisonment of person under 17

No court shall impose imprisonment on a person under 17 years of age.

416 Restriction on detention of person under 21

- (1) No court shall impose detention on a person under 21 years of age, unless the court is of opinion that no other method of dealing with him is appropriate.
- (2) For the purpose of determining in pursuance of the provisions of subsection (1) of this section whether any other method of dealing with a person mentioned therein is appropriate, the court shall obtain information about that person's circumstances from an officer of a local authority or otherwise and shall consider that information; and the court shall take into account any information before it which is relevant to his character and to his physical and mental condition.
- (3) Where a court imposes detention on an offender under 21 years of age, the court shall state the reason for its opinion that no other method of dealing with him is appropriate, and the reason shall be entered in the record of the proceedings along with the finding and sentence.
- (4) Where in the case of a person who is of or over 16 years of age but less than 21 years of age the court is of opinion as aforesaid, and either—
 - (a) if the person has been convicted of an offence punishable with imprisonment, is satisfied, having considered all the circumstances of the case, that neither a sentence of Borstal training nor a sentence of detention in a detention centre should be imposed; or
 - (b) would have power but for this section to impose imprisonment otherwise than by sentence;
 - it shall, subject to the provisions of this Act, instead of imposing a term of imprisonment upon him impose detention in a young offenders institution for a term not exceeding the term for which he could have been imprisoned.
- (5) For the purposes of any reference in this section to a term of imprisonment or to a term of detention in a young offenders institution, consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.

417 Restriction on imprisonment of first offenders

(1) A court of summary jurisdiction shall not impose imprisonment on a first offender of or over the age of 21 unless the court is of the opinion that no other method of dealing with him is appropriate; and section 416 (2) of this Act shall apply for the purpose of determining whether any other method of dealing with such a person is appropriate as it applies for the purpose of determining whether any other method of dealing with a person under the age of 21 is appropriate.

- (2) Section 416(3) of this Act shall, with the necessary modifications, apply where a first offender of or over the age of 21 is sentenced to imprisonment as it applies where imprisonment is imposed on a person under that age.
- (3) A person falling to be dealt with for an offence shall be treated for the purposes of this section as a first offender if, but only if, he has not since attaining the age of 17 been convicted of any other offence, except an offence not punishable with imprisonment.
- (4) In determining for the purposes of subsection (3) of this section whether a person has been convicted of an offence, no account shall be taken of any of the following enactments, that is to say—
 - (a) section 191 or 392 of this Act (under which a conviction leading to probation or discharge is to be disregarded except as therein mentioned);
 - (b) section 13 of the Powers of Criminal Courts Act 1973 (which makes similar provision in respect of convictions on indictment in England and Wales);
 - (c) section 8 of the Probation Act (Northern Ireland) 1950 or any corresponding enactment of the Parliament of Northern Ireland for the time being in force;

and any order made by a court of summary jurisdiction under section 383 or 384 of this Act shall be treated as a conviction.

- (5) For the purposes of subsection (3) of this section, a previous conviction shall be disregarded after the expiration of a period of 10 years from the date of that conviction, being a period exclusive of any period during which the offender was in custody under sentence in respect of the conviction.
- (6) In this section "court" does not include a court-martial, and "offence not punishable with imprisonment" means an offence for which no offender may be sentenced to imprisonment.

418 Detention in a detention centre

- (1) Subject to the provisions of this section, in any case where a person who is not less than 16 but under 21 years of age is convicted of an offence punishable with imprisonment, and the court has been notified by the Secretary of State that a detention centre is available for the reception from that court of persons of his class or description, it may pass on him a sentence of detention in that centre for a fixed term of three months.
- (2) A court shall not pass a sentence under this section in the case of a person who has served or is serving a sentence involving his detention for two months or more in a prison or in a young offenders institution or a sentence of Borstal training, or in the case of a person who has served a sentence of detention in a detention centre, unless the court is of the opinion that, having regard to special considerations arising out of the circumstances of the case and the character of the offender, this method of dealing with him is the most appropriate.
- (3) Where it appears to the Secretary of State that a person detained in a detention centre is unfit for such detention by reason of his health, without prejudice to any other powers he may have in the matter, he may, after consultation where practicable with the judge by whom or the presiding chairman of the court by which the sentence was passed, release that person; and he shall then be required to be under supervision in accordance with section 11(1) of the Criminal Justice (Scotland) Act 1963.

419 Term of detention in a detention centre

- (1) The term for which a person may be detained in a detention centre shall not exceed three months at a time; and accordingly no court may pronounce an order the effect of which would be that a person would be liable to be detained for more than that period.
- (2) Where a court has before it a person convicted of an offence punishable with imprisonment who is serving a sentence of detention in a detention centre or who has been sentenced to and has not yet started to serve such a sentence as aforesaid, it may pass either of the following sentences (subject to the requirements of any enactment relating to those sentences)—
 - (a) a sentence of detention in a young offenders institution, or, if the person is of or over 21 years of age, a sentence of imprisonment, for a period not exceeding the aggregate of the unexpired portion of the sentence of detention in a detention centre and the maximum period of detention in a young offenders institution or of imprisonment, as the case may be, which the court may impose for the offence of which it has convicted the person; or
 - (b) a sentence of Borstal training;

and in that event the sentence of detention in a detention centre shall cease to have effect.

420 Recall to Borstal on re-conviction

- (1) Where a person sentenced to Borstal training, being under supervision after his release from a Borstal institution, is convicted of an offence punishable with imprisonment, the court may, instead of dealing with him in any other manner, make an order for his recall.
- (2) An order for the recall of a person made as aforesaid shall have the like effect as an order for recall made by the Secretary of State under section 33(4) of the Prisons (Scotland) Act 1952.

421 Recall to young offenders institution on re-conviction

- (1) Where a person sentenced to detention in a young offenders institution, being under supervision after his release from such an institution, is convicted of an offence punishable with imprisonment, the court may, instead of dealing with him in any other manner, make an order for his recall.
- (2) An order for the recall of a person made as aforesaid shall have the like effect as an order for recall made by the Secretary of State under section 12 of the Criminal Justice (Scotland) Act 1963.

422 Revocation of licence by court

- (1) If a person subject to a licence under section 60 or 61 of the Criminal Justice Act 1967 is convicted of an offence punishable on indictment with imprisonment, the court may, whether or not it passes any other sentence on him, revoke the licence.
- (2) The power conferred on a court by this section to revoke the licence of any person released under section 60 of the Criminal Justice Act 1967 after being transferred to either part of Great Britain from another part of the United Kingdom, the Channel Islands or the Isle of Man shall be exercisable notwithstanding anything in

section 26(6) of the Criminal Justice Act 1961 (exclusion of supervision of persons so transferred).

Return to prison in case of breach of supervision

- (1) If, on sworn information laid by or on behalf of the Secretary of State, it appears to the sheriff that a person, being under supervision under Schedule 1 to the Criminal Justice (Scotland) Act 1963, has failed to comply with any of the requirements imposed on him by his notice of supervision, the sheriff may issue a warrant for the arrest of that person or may, if he thinks fit, instead of issuing such a warrant in the first instance, issue a citation requiring the person to appear before him at such time as may be specified in the citation.
- (2) If it is proved to the satisfaction of the sheriff before whom a person appears or is brought in pursuance of the foregoing subsection that the person has failed to comply with any of the requirements of the notice of supervision, the sheriff shall, unless having regard to all the circumstances of the case, he considers it unnecessary or inexpedient to do so, order that he be sent back to prison for such term as may be specified in that order, not exceeding whichever is the shorter of the following, that is to say—
 - (a) a period of three months;
 - (b) a period equal to so much of the period of 12 months referred to in paragraph 1 of Schedule 1 to the Criminal Justice (Scotland) Act 1963 as was unexpired on the date on which proceedings were commenced.
- (3) Subject to the following provisions of this section, this Part of this Act shall apply in relation to proceedings for an order as aforesaid as it applies in relation to proceedings in respect of a summary offence, and references in this Part of this Act to an offence, trial, conviction or sentence shall be construed accordingly.
- (4) Proceedings for an order under subsection (2) of this section may be brought before a sheriff having jurisdiction in the area in which the supervising officer carries out his duties.
- (5) A warrant issued for the purposes of proceedings for an order under subsection (2) above may, if the person laying the information so requests, bear an endorsement requiring any constable charged with its execution to communicate with the Secretary of State before arresting the person under supervision if the constable finds that that person is earning an honest livelihood or that there are other circumstances which ought to be brought to the notice of the Secretary of State.
- (6) Where a person while under supervision under Schedule 1 to the Criminal Justice (Scotland) Act 1963 is convicted of an offence for which the court has power to pass sentence of imprisonment, the court may, instead of dealing with him in any other manner, make such an order as could be made by a sheriff under subsection (2) of this section in proceedings for such an order.
- (7) The Secretary of State may at any time release from prison a person who has been sent back to prison under subsection (2) or (6) of this section; and the provisions of this section and of the said Schedule shall apply to a person released by virtue of this subsection, subject to the following modifications:
 - (a) that the period of 12 months referred to in paragraph 1 of the said Schedule shall be calculated from the date of his original release; and

- (b) in relation to any further order for sending him back to prison under this section, the period referred to in subsection (2)(a) of this section shall be reduced by any time during which he has been detained by virtue of the previous order.
- (8) In any proceedings, a certificate purporting to be signed by or on behalf of the Secretary of State and certifying—
 - (a) that a notice of supervision was given to any person in the terms specified in the certificate and on the date so specified; and
 - (b) either that no notice has been given to him under paragraph 3 of the said Schedule or that a notice has been so given in the terms specified in the certificate.

shall be sufficient evidence of the matters so certified; and the fact that a notice of supervision was given to any person shall be sufficient evidence that he was a person to whom section 14 of the Criminal Justice (Scotland) Act 1963 applies.

(9) For the purposes of Part III of the Criminal Justice Act 1961, a person who has been sent back to prison under subsection (2) or (6) of this section, and has not been released again, shall be deemed to be serving part of his original sentence, whether or not the term of that sentence has in fact expired.

424 Detention in precincts of court

Where a court of summary jurisdiction has power to impose imprisonment on an offender it may, in lieu of so doing, order that the offender be detained within the precincts of the court or at any police station, till such hour, not later than eight in the evening on the day on which he is convicted, as the court may direct:

Provided that before making an order under this section a court shall take into consideration the distance between the proposed place of detention and the offender's residence (if known to, or ascertainable by, the court), and shall not make any such order under this section as would deprive the offender of a reasonable opportunity of returning to his residence on the day on which the order is made.

425 No imprisonment for less than five days

- (1) No person shall be sentenced to imprisonment by a court of summary jurisdiction for a period of less than five days.
- (2) Where a court of summary jurisdiction has power to impose imprisonment on an offender, it may, if any suitable place provided and certified as hereinafter mentioned is available for the purpose, sentence the offender to be detained therein, for such period not exceeding four days as the court thinks fit, and an extract of the finding and sentence shall be delivered with the offender to the person in charge of the place where the offender is to be detained and shall be a sufficient authority for his detention in that place in accordance with the sentence.
- (3) The expenses of the maintenance of offenders detained under this section shall be defrayed in like manner as the expenses of the maintenance of prisoners under the Prisons (Scotland) Act 1952.
- (4) The Secretary of State may, on the application of any police authority, certify any police cells or other similar places provided by the authority to be suitable places for the detention of persons sentenced to detention under this section, and may by statutory

instrument make regulations for the inspection of places so provided, the treatment of persons detained therein and generally for carrying this section into effect.

- (5) No place certified under this section shall be used for the detention of females unless provision is made for their supervision by female officers.
- (6) In this section the expression "police authority" means a regional or islands council, except that where there is an amalgamation scheme under the Police (Scotland) Act 1967 in force it means a joint police committee.
- (7) Until 16th May 1975 the last foregoing subsection shall have effect as if, for the words "regional or islands council", there were substituted the words "council of a county or of a burgh which maintains a separate police force ".

426 Legal custody

Any person required or authorised by or under this Act to be taken to any place or to be kept in custody shall, while being so taken or kept, be deemed to be in legal custody.

Miscellaneous provisions as to conviction, sentence, etc.

427 Conviction of part only of charge

A conviction of a part or parts only of the charge or charges libelled in a complaint shall imply dismissal of the rest of the complaint.

428 Art and part guilt of statutory offence

A person may be convicted of, and punished for, a contravention of any statute or order, notwithstanding that he was guilty of such contravention as art and part only.

" Conviction " and " sentence " not to be used in relation to a child

The words "conviction" and "sentence" shall not be used in relation to children dealt with summarily and any reference in any enactment, whether passed before or after the commencement of this Act, to a person convicted, a conviction or a sentence shall in the case of a child be construed as including a reference to a person found guilty of an offence, a finding of guilt or an order made upon such a finding as the case may be.

430 Forms of finding and sentence

(1) The finding and sentence and any order of a court of summary jurisdiction, as regards both offences at common law and offences under any statute or order, shall be entered in the record of the proceedings in the form, as nearly as may be, of the appropriate form contained in Part V of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act, which shall be sufficient warrant for all execution thereon and for the clerk of court to issue extracts containing such executive clauses as may be necessary for implement thereof; and, when imprisonment forms part of any sentence or other judgment, warrant for the apprehension and interim detention of the accused pending his being committed to prison shall, where necessary, be implied.

- (2) Where a fine imposed by a court of summary jurisdiction is paid at the bar it shall not be necessary for the court to refer to the period of imprisonment applicable to the non-payment thereof.
- (3) Where several charges at common law or under any statute or order are embraced in one complaint, a cumulo fine may be imposed in respect of all or any of such charges of which the accused is convicted.
- (4) A sentence following on a conviction by a court of summary jurisdiction may be framed so as to take effect on the expiry of any previous sentence which at the date of such conviction the accused is undergoing.

431 Consideration of time spent in custody

A court, in passing a sentence of imprisonment or detention in a young offenders institution as defined in section 31(1)(d) of the Prisons (Scotland) Act 1952 on a person for any offence, shall, 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.

432 Deferred sentence

It shall be competent for a court to defer sentence after conviction for a period and on such conditions as the court may determine.

433 Sentence in open court

Every sentence imposed by a court of summary jurisdiction shall unless otherwise provided be pronounced in open court in the presence of the accused, but need not be written out or signed in his presence.

434 Further provision as to sentence

- (1) It shall be competent at any time before imprisonment has followed on a sentence for the court to alter or modify it; but no higher sentence than that originally pronounced shall be competent.
- (2) The signature of the judge or clerk of court to any sentence shall be sufficient also to authenticate the findings on which such sentence proceeds.
- (3) The power conferred by subsection (1) of this section to alter or modify a sentence shall be exercisable without requiring the attendance of the accused and, without prejudice to the generality of the power, shall include power, in the case where payment of a fine by instalments has been ordered, to reduce the amount, or allow further time for the payment, of any instalment (whether the time for payment thereof has or has not expired), or to order payment of the fine, so far as unpaid, by instalments of smaller amounts or at longer intervals than originally allowed.

435 Expenses

The following provisions shall have effect with regard to the award of expenses in a summary prosecution:—

- (a) expenses may be awarded to or against a private prosecutor but shall not be awarded against any person prosecuting in the public interest unless the statute or order under which the prosecution is brought expressly or impliedly authorises such an award;
- (b) the finding regarding expenses shall be stated in the sentence or judgment disposing of the case;
- (c) expenses awarded to the prosecutor shall be restricted to the fees set forth in Schedule 3 to the Summary Jurisdiction (Scotland) Act 1954;
- (d) the court may award expenses against the accused without imposing any fine or may direct the expenses incurred by the prosecutor, whether public or private, to be met wholly or partly out of any fine imposed;
- (e) expenses awarded against the accused, where the fine or fines imposed do not exceed £12, shall not exceed £3:
 - Provided that if it appears to the court that the reasonable expenses of the prosecutor's witnesses together with the other expenses exceed the sum of £3, the court may direct the expenses of those witnesses to be paid wholly or partly out of the fine;
- (f) where a child is himself ordered by a sheriff sitting summarily to pay expenses in addition to a fine, the amount of the expenses so ordered to be paid shall in no case exceed the amount of the fine;
- (g) any expenses awarded shall be recoverable by civil diligence in accordance with section 411 of this Act.

436 Forfeiture of implements

Where a person is convicted of any offence by a court of summary jurisdiction or where a probation order is made by such a court in respect of any person, the court may—

- (a) order the forfeiture of any instruments or other articles found in his possession and used or calculated to be of use in the commission of the offence of which such person was convicted or on account of which the probation order was made and,
- (b) save as otherwise expressly provided in any enactment with regard to the disposal of articles forfeited on conviction of an offence, order such instruments or articles to be destroyed or otherwise disposed of.

437 Warrant of search for forfeited articles

Where a court has made an order for the forfeiture of an article, the court or any justice of the peace 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; and for the purposes of this section, any reference to a justice of the peace includes a reference to the sheriff and to a magistrate.

438 Register of children found guilty of offences

In addition to any other register required by law, a separate register of children found guilty of offences and of children discharged on bond or put on probation shall be kept for every summary court by the chief constable or other person charged with the duty of keeping registers of convictions. The register shall apply to children of such age, and shall include such particulars, as may be directed by the Secretary of State, and it shall be the duty of the keeper of the register, within seven days after any such child has been dealt with by the court, to transmit a copy of the entry relating to the child to the education authority for the area in which the child resides.

439 Correction of errors

It shall be competent to correct any error in the record of the proceedings in a summary prosecution or in the extract of any sentence or order of the court at any time prior to execution thereon, and such correction shall be authenticated by the initials of the clerk of court.

440 Extract sufficient warrant for imprisonment

Where imprisonment is authorised by the sentence of a court of summary jurisdiction, an extract of the finding and sentence in the form, as nearly as may be, of the appropriate form contained in Part V of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act shall be a sufficient warrant for the apprehension and commitment of the accused, and no such extract shall be void or liable to be set aside on account of any error or defect in point of form.

441 Provision for court comprising more than one judge

In any proceedings in a court of summary jurisdiction consisting of more than one judge, the signature of one judge shall be sufficient in all warrants or other proceedings prior or subsequent to conviction, although the presence and signature of two or more judges may be necessary to conviction of the offence in respect of which such warrants are granted or proceedings take place, and it shall not be necessary that the judge so signing shall be one of the judges trying or dealing with the case otherwise.

Review

442 Appeal by stated case

On the final determination of any summary prosecution, either party may, notwithstanding any provision in any statute excluding review, make application to the court to state a case for the opinion of the High Court, and on such application being made the court, subject to the conditions hereinafter mentioned, shall be bound to state a case for such opinion, and it shall thereupon be competent to appeal to, and to bring under the review of, the High Court by stated case—

- (a) the relevancy of the complaint;
- (b) any irregularity in procedure;
- (c) any alleged error of the court in point of law; and

(d) generally any matter which might immediately before the commencement of this Act have been competently reviewed by suspension, advocation, or appeal under the Heritable Jurisdictions (Scotland) Act 1746 or otherwise.

443 Appeals against hospital orders, etc.

Where a hospital order, 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, appeal against that order in the same manner as against a conviction.

444 Manner and time of appeal

- (1) Application to have a case stated shall be made at the time when judgment is given, or at any time within 10 days thereafter, and shall be signed by the appellant or his solicitor and either written on the complaint or lodged with the clerk of court, and where the latter course is adopted the clerk of court shall enter in the record of proceedings the date when the application was lodged and shall thereupon intimate the appeal to the respondent.
- (2) Where such an application has been made by the person convicted, and the judge by whom he was convicted dies before signing the case or is precluded by illness or other cause from doing so, it shall be competent for the convicted person to present a bill of suspension to the High Court and to bring under the review of that court any matter which might have been brought under review by stated case.
- (3) Without prejudice to any other power of relief which the High Court may have, where it appears to that court on application made in accordance with the following provisions of this section, that the applicant has failed to comply with any of the requirements of subsection (1) of this section, the High Court may direct that such further period of time as it may think proper be afforded to the applicant to comply with any requirement of the aforesaid provisions.
- (4) Any application for a direction under the last foregoing subsection shall be made in writing to the Clerk of Justiciary and shall state the grounds for the application, and notification of the application shall be made by the appellant or his solicitor to the clerk of the court from which the appeal is to be taken, and the clerk shall thereupon transmit the complaint, documentary productions and any other proceedings in the cause to the Clerk of Justiciary.
- (5) The High Court shall dispose of any application under this section in like manner as an application to review the decision of an inferior court on a grant of interim liberation, but shall have power—
 - (a) to dispense with a hearing; and
 - (b) to make such enquiry in relation to the application as the court may think fit; and when the High Court has disposed of the application the Clerk of Justiciary shall inform the clerk of the inferior court of the result.
- (6) Section 457(a) of this Act shall apply for the purpose of giving effect to the provisions of this section.

445 Caution by appellant

Immediately on an appeal under section 442 of this Act being taken, the court shall fix a sum to be consigned by the appellant, or for which caution is to be found, to meet any fine and expenses imposed and the expenses of the appeal, and the appellant shall not be entitled to have a case stated unless within five days after the date of his appeal he has made consignation, or found such caution, to the satisfaction of the clerk of court and has also paid the clerk his fees for preparing the case:

Provided that—

- (i) the court shall have power in any case where it deems it expedient to do so to dispense with consignation or the finding of caution, and
- (ii) a person prosecuting in the public interest shall not be bound to make consignation or to find caution.

446 Procedure where appellant in custody

- (1) If an appellant under section 442 of this Act is in custody, the court may, on consignation being made or caution being found in accordance with the last foregoing section, grant interim liberation on such conditions as to caution or otherwise as the court may fix, and may grant a sist of execution, or may dispense with further consignation or caution, or may make any other interim order which the justice of the case may require, or may refuse to grant interim liberation.
- (2) An application for interim liberation shall be disposed of by the court within 24 hours after such application has been made. The appellant, if dissatisfied with the amount of caution fixed, or on refusal of liberation, may, within 24 hours after the judgment of the court, appeal thereagainst by a note of appeal written on the complaint and signed by himself or his solicitor, and the complaint and proceedings shall thereupon be transmitted to the Clerk of Justiciary, and the High Court or any judge thereof, either in court or in chambers, shall, after hearing parties, have power to" review the decision of the inferior court and to grant interim liberation on such conditions as such court or judge may think fit, or to refuse interim liberation.
- (3) No clerks' fees, court fees or other fees or expenses shall be exigible from or awarded against an appellant in custody in respect of an appeal to the High Court against the amount of caution fixed or on account of refusal of liberation by a court of summary jurisdiction.
- (4) If an appellant who has been granted interim liberation does not thereafter proceed with his appeal, the inferior court shall have power to grant warrant to apprehend and imprison him for such period of his sentence as at the date of his liberation remained unexpired, such period to run from the date of his imprisonment under such warrant.
- (5) Where an appellant who has been granted interim liberation does not thereafter proceed with his appeal, the court from which the appeal was taken shall have power, where at the time of the abandonment of the appeal the person is serving a term or terms of imprisonment imposed subsequently to the conviction appealed against, to order that the sentence or, as the case may be, the unexpired portion of that sentence relating to that conviction should run from such date as the court may think fit, not being a date later than the date on which the term or terms of imprisonment subsequently imposed expired.

447 Draft stated case to be prepared

- (1) The clerk of court shall, within 10 days from an application for a stated case under section 442 of this Act, or when consignation or caution is ordered, within five days from the date when consignation has been made or caution found, prepare a draft stated case, and shall within the said period send the draft to the appellant or his solicitor, and a duplicate thereof to the respondent or his solicitor.
- (2) A stated case shall be in the form, as nearly as may be, of the form contained in Part VI of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or of the appropriate form contained in an Act of Adjournal under this Act, and shall set forth the particulars of any matters competent for review which the appellant desires to bring under the review of the High Court, and of the facts, if any, proved in the case, and any point of law decided, and the grounds of the decision.

448 Adjustment and signature of case

- (1) Within one month after receipt of the draft case under the last foregoing section, each party shall cause to be transmitted to the judge against whose judgment the appeal is taken and to the other parties a note of any adjustments he desires to have made on the draft case or intimate that he has no such adjustments to suggest, and if the appellant fails to do so he shall be deemed to have abandoned his appeal, and in any such case the court shall have the like power to grant warrant for his apprehension and imprisonment as is conferred by section 446 of this Act.
- (2) Within 14 days after the latest date on which any such adjustments or intimation as aforesaid are or is received, the judge against whose judgment the appeal is taken shall (unless the appellant is deemed to have abandoned his appeal) after considering any such adjustments, state and sign the case.
- (3) As soon as the case shall be signed by the judge against whose judgment the appeal is taken, the clerk of court shall send it to the appellant and transmit the complaint, productions and any other proceedings in the cause to the Clerk of the Justiciary.
- (4) The appellant shall within 10 days after receiving the case send a copy of it to the respondent and cause it to be transmitted to or lodged with the Clerk of Justiciary together with a certificate by himself or his solicitor that a copy has been sent to the respondent in accordance with the requirement hereinbefore contained.
- (5) If the appellant fails to comply with the last foregoing subsection he shall be deemed to have abandoned his appeal, and the court shall have the like power to grant warrant for his apprehension and imprisonment as is conferred by section 446 of this Act.
- (6) Without prejudice to any other power of relief which the High Court may have, where it appears to that court on application made in accordance with the following provisions of this section, that the applicant has failed to comply with any of the requirements of subsection (4) of this section, the High Court may direct that such further period of time as it may think proper be afforded to the applicant to comply with any requirement of the aforesaid provisions.
- (7) Any application for a direction under the last foregoing subsection shall be made in writing to the Clerk of Justiciary and shall state the grounds for the application.
- (8) The High Court shall dispose of any application under this section in like manner as an application to review the decision of an inferior court on a grant of interim liberation, but shall have power—

- (a) to dispense with a hearing; and
- (b) to make such enquiry in relation to the application as the court may think fit; and when the High Court has disposed of the application the Clerk of Justiciary shall inform the clerk of the inferior court of the result.
- (9) Section 457(a) of this Act shall apply for the purpose of giving effect to the provisions of this section.

449 Abandonment of appeal

- (1) An appellant under section 442 of this Act may at any time prior to lodging the case with the Clerk of Justiciary abandon his appeal by minute signed by himself or his solicitor, written on the complaint or lodged with the clerk of the inferior court, and intimated to the respondent, but such abandonment shall be without prejudice to any other competent mode of appeal, review, advocation or suspension.
- (2) On the case being lodged with the Clerk of Justiciary, the appellant shall be held to have abandoned any other mode of appeal which might otherwise have been open to him.

450 Record of procedure in appeal

On an appeal being taken under section 442 of this Act the clerk of court shall record on the complaint the different steps of procedure in the appeal, and such record shall be evidence of the dates on which the various steps of procedure took place. The forms of procedure in appeals shall be as nearly as may be in accordance with the forms contained in Part VI of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act.

451 Computation of time

In computing any number of days for the purpose of the provisions of this Part of this Act relating to appeal, Sundays and public holidays shall be excluded.

452 Hearing of appeal

- (1) A stated case under this Part of this Act shall be heard by the High Court on such date as it may fix, and the High Court shall have power to affirm, reverse or amend the determination of the inferior court, or to impose a fine instead of imprisonment where imprisonment has been awarded, or to reduce the period of imprisonment, or to reduce any fine imposed by the inferior court, or to remit the case back to the inferior court to be amended, and thereafter, on the case being amended and returned, to deliver judgment thereon, or to remit the case to the inferior court with their opinion thereon.
- (2) Where in any such case an appeal against an acquittal is sustained, the High Court may either convict and sentence the accused or may remit the case to the inferior court with instructions to convict and sentence the accused, who shall be bound to attend any diet fixed by such court for this purpose.
- (3) The High Court shall have power in appeals under this Part of this Act to award such expenses both in the High and inferior courts as it may think fit.

- (4) The High Court may remit to any fit person to inquire and report in regard to the facts and circumstances of any appeal, and on considering such report may pronounce judgment.
- (5) Where an appellant has been granted interim liberation, whether his appeal is under this Part of this Act or otherwise, he shall appear personally in court on the day or days fixed for the hearing of his appeal, failing which, unless the court shall on cause shown permit the appeal to be heard, he shall be held to have abandoned it.
- (6) Where an appeal is dismissed or refused in whole or in part, the High Court shall have power to grant warrant to apprehend and imprison the appellant for any term, to run from the date of his imprisonment, not longer than that part of the term of imprisonment specified in the sentence brought under review which remained unexpired at the date of liberation.
- (7) Where at the time an appeal is dismissed or refused as aforesaid the appellant is serving a term or terms of imprisonment imposed subsequently to the conviction appealed against, the High Court shall have the like powers in regard to him as may be exercised by a court of summary jurisdiction in pursuance of section 446(5) of this Act.

453 Consent by prosecutor to set aside conviction

- (1) Where an appeal has been taken under section 442 of this Act or by suspension or otherwise, and the prosecutor, on the appeal being intimated to him, is not prepared to maintain the judgment appealed against, he may by a minute signed by him and written on the complaint or lodged with the clerk of court consent to the conviction and sentence being set aside, either in whole or in part. Such minute shall set forth the grounds on which the prosecutor is of opinion that the judgment cannot be maintained.
- (2) A copy of any minute under the foregoing subsection shall be sent by the prosecutor to the appellant, and the clerk of court shall thereupon ascertain from the appellant or his solicitor whether he desires to be heard by the High Court before the appeal is disposed of, and shall note on the record whether or not the appellant so desires, and shall thereafter transmit the complaint and relative proceedings to the Clerk of Justiciary.
- (3) The Clerk of Justiciary on receipt of a complaint and relative proceedings under the last foregoing subsection shall lay them before any judge of the High Court, either in court or in chambers, and such judge, after hearing parties if they desire to be heard, or without hearing parties, may set aside the conviction either in whole or in part and award expenses to the appellant not exceeding £5.25, or may refuse to set aside the conviction, in which case the proceedings shall be returned to the clerk of the inferior court, and the appellant shall then be entitled to proceed with his appeal in the same way as if it had been marked on the date when the complaint and proceedings are returned to the clerk of the inferior court.
- (4) Where proceedings are taken under this section, the preparation of the draft stated case shall be delayed pending the decision of the High Court.
- (5) The power conferred by this section to consent to a conviction and sentence being set aside shall be exercisable
 - where the appeal is by stated case, at any time within 10 days after the receipt by the prosecutor of the draft stated case; and

(b) where the appeal is by suspension at any time within 10 days after the service on the prosecutor of the bill of suspension.

454 Convictions not to be quashed on certain grounds

- (1) No conviction, sentence, judgment, order of court or other proceeding whatsoever under this Part of this Act shall be quashed for want of form or, where the accused had legal assistance in his defence, shall be suspended or set aside in respect of any objections to the relevancy of the complaint, or to the want of specification therein, or to the competency or admission or rejection of evidence at the trial in the inferior court, unless such objections shall have been timeously stated at the trial by the solicitor of the accused.
- (2) Save as provided in sections 442 and 452 of this Act no conviction, sentence, judgment, order of court or other proceeding whatsoever shall be quashed except on the ground of incompetency, or corruption, or malice, or oppression, or unless the High Court shall be of opinion that the accused has been misled as to the true nature of the charge against him or been prejudiced in his defence on the merits, and that a miscarriage of justice has resulted thereby:

Provided that the High Court may amend any conviction, sentence, judgment, order of court or other proceeding, or may pronounce such other sentence, judgment, or order as they shall judge expedient.

455 Other modes of appeal

- (1) The provisions regulating appeals shall, subject to the provisions of this Part of this Act, be without prejudice to any other mode of appeal competent.
- (2) Any officer of law may serve any bill of suspension or other writ relating to an appeal.

Miscellaneous

456 Actions of damages in respect of proceedings under this Part of this Act

- (1) No judge, clerk of court or prosecutor in the public interest shall be found liable by any court in damages for or in respect of any proceedings taken, act done, or judgment, decree or sentence pronounced under this Part of this Act, unless—
 - (a) the person suing has suffered imprisonment in consequence thereof; and
 - (b) such proceeding, act, judgment, decree or sentence has been quashed; and
 - (c) the person suing shall specifically aver and prove that such proceeding, act, judgment, decree or sentence was taken, done or pronounced maliciously and without probable cause.
- (2) No such liability as aforesaid shall be incurred or found where such judge, clerk of court or prosecutor shall establish that the person suing was guilty of the offence in respect whereof he had been convicted, or on account of which he had been apprehended or had otherwise suffered, and that he had undergone no greater punishment than was assigned by law to such offence.
- (3) No action to enforce such liability as aforesaid shall lie unless it is commenced within two months after the proceeding, act, judgment, decree or sentence founded on, or in

the case where the Act under which the action is brought fixes a shorter period, within that shorter period.

(4) In this section "judge" shall not include "sheriff", and the provisions of this section shall be without prejudice to the privileges and immunities possessed by sheriffs.

457 Acts of Adjournal

It shall be lawful for the High Court by Act of Adjournal—

- (a) to make rules to give effect to any of the provisions of any enactment relating to summary criminal jurisdiction or procedure, including this Part of this Act and the Backing of Warrants (Republic of Ireland) Act 1965 and, without prejudice to the generality of this subsection, to make provision for the manner in which an accused person or witness may be cited in any proceedings under this Part of this Act;
- (b) to make rules regulating summary criminal procedure under any enactment, including this Part of this Act;
- (c) to cancel or amend any of the forms of summary criminal procedure under any enactment, including this Part of this Act, or to provide additional forms.