



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PART II

SUMMARY PROCEDURE

Jurisdiction

283 Application of Part II of this Act

- (1) This Part of this Act shall apply to summary proceedings in respect of—
 - (a) any offence which might prior to the passing of this Act, or which may under the provisions of this or any Act, whether passed before or after the passing of this Act, be tried in a summary manner;
 - (b) any offence or the recovery of a penalty under any statute which does not exclude summary procedure ;
 - (c) any order ad factum praestandum, or other order of court or warrant competent to a court of summary jurisdiction;and shall apply to procedure in all courts of summary jurisdiction in so far as they have jurisdiction in the matters aforesaid.
- (2) Where any statute provides for summary proceedings or appeal therefrom being taken under any public general or local enactment, such proceedings or appeal shall be taken under this Part of this Act.
- (3) Nothing in this Part of this Act shall extend to any information or complaint or other proceeding under or by virtue of any statutory provision for the recovery of any rate, tax, or impost whatsoever, or shall affect any right to sue for a penalty, or to apply for an order of court or other warrant ad factum praestandum in the Court of Session or sheriff court, but it shall not be competent to sue for penalties in the small debt court.

284 Jurisdiction of inferior courts

The jurisdiction and powers of all courts of summary jurisdiction, except in so far as the same may be altered or modified by any future Act shall remain as at the commencement of this Act and the district court shall, without prejudice to any other or wider powers conferred by statute, be entitled to exercise power on convicting of a common law offence—

- (a) to award imprisonment for any period not exceeding 60 days;
- (b) to impose a fine not exceeding £100 ;
- (c) to ordain the accused (in lieu of or an addition to such imprisonment or fine) to find caution for good behaviour for any period not exceeding six months and to an amount not exceeding £100 ;
- (d) failing payment of such fine or on failure to find such caution, to award imprisonment in accordance with section 407 of this Act :

Provided that in no case shall the total imprisonment exceed 60 days.

285 Certain crimes not to be tried in inferior courts

A court of summary jurisdiction other than the sheriff court shall not have jurisdiction to try or to pronounce sentence in, but shall, to the extent and in the manner mentioned in the next following section, be entitled to take cognizance of the case of any person—

- (a) found within the jurisdiction of such court, and brought before it accused or suspected of having committed at any place beyond the jurisdiction of such court any offence, or
- (b) brought before such court accused or suspected of having committed within the jurisdiction thereof any of the following offences:—
 - (i) murder, culpable homicide, robbery, rape, wilful fire-raising, or attempt at wilful fire-raising:
 - (ii) stouthrief, theft by housebreaking, or housebreaking with intent to steal:
 - (iii) theft or reset of theft, falsehood fraud or wilful imposition, breach of trust or embezzlement, all to an amount exceeding £25:
 - (iv) any of the offences specified in the last foregoing head, or any attempt thereat, where the accused is known to have been previously convicted of any offence inferring dishonest appropriation of property :
 - (v) assault whereby any limb has been fractured, or assault with intent to ravish, or assault to the danger of life, or assault by stabbing:
 - (vi) uttering forged documents or uttering forged bank or banker's notes, or offences under the Acts relating to coinage :

Provided that a person who has been dismissed with an admonition or in whose case a probation order has been made without any sentence having been subsequently pronounced, shall for the purposes of this section be deemed not to have been convicted.

286 Remit to higher court or other jurisdiction

If either in the preliminary investigation or in the course of the trial of any offence it shall appear that the offence is one which cannot competently be tried in the court before which an accused is brought, or is one which, in the opinion of the court in view

of the circumstances of the case, should be dealt with by a higher court, it shall be lawful for the court to commit the accused to prison for examination for any period not exceeding four days, and the prosecutor shall forthwith give notice of such committal to the procurator fiscal of the district within which such offence was committed, or to such other official as may be entitled to take cognizance thereof, in order that the accused may be dealt with according to law.

287 Boundaries of jurisdiction

- (1) Where an offence is committed in any harbour, river, arm of the sea or other water (tidal or otherwise) which runs between or forms the boundary of the jurisdiction of two or more courts, such offence may be tried by any one of such courts.
- (2) Where an offence is committed on the boundary of the jurisdiction of two or more courts, or within the distance of 500 yards of any such boundary, or partly within the jurisdiction of one court and partly within the jurisdiction of another court or courts, such offence may be tried by any one of such courts.
- (3) Where an offence is committed on any person or in respect of any property in or upon any carriage, cart or vehicle employed in a journey by road or railway, or on board any vessel employed in a river, lake, canal or inland navigation, such offence may be tried by any court through whose jurisdiction such carriage, cart, vehicle or vessel passed in the course of the journey or voyage during which the offence was committed, and, where the side, bank, centre or other part of the road, railway, river, lake, canal or inland navigation along which the carriage, cart, vehicle or vessel passed in the course of such journey or voyage is the boundary of the jurisdiction of two or more courts, such offence may be tried by any one of such courts.
- (4) Where several offences, which if committed in one sheriff court district could be tried under one complaint, are alleged to have been committed by any person in different sheriff court districts, the accused may be tried for all or any of those offences under one complaint before the sheriff of any one of such sheriff court districts.
- (5) Where an offence is authorised by this section to be tried by any court, it may be dealt with, heard, tried, determined, adjudged and punished as if the offence had been committed wholly within the jurisdiction of such court.

288 Jurisdiction of sheriff

- (1) Subject to the provisions of this section, the jurisdiction of the sheriffs within their respective sheriffdoms shall extend to and include all navigable rivers, ports, harbours, creeks, shores and anchoring grounds in or adjoining such sheriffdoms and shall include all criminal maritime causes and proceedings (including such as may apply to persons furth of Scotland) provided the accused shall upon any legal ground of jurisdiction be subject to the jurisdiction of the sheriff before whom such cause or proceeding may be raised.
- (2) It shall not be competent to the sheriff to try any crime committed on the seas which it would not be competent for him to try if the crime had been committed on land.
- (3) Where sheriffdoms are separated by a river, firth, or estuary, the sheriffs on either side shall have concurrent jurisdiction over the intervening space occupied by water.
- (4) The sheriff shall have a concurrent jurisdiction with every other court within his sheriffdom in relation to all offences competent for trial in such courts.

289 Summary powers of sheriff

The sheriff shall, without prejudice to any other or wider powers conferred by statute, have power on convicting any person of a common law offence—

- (a) to impose a fine not exceeding £150 ;
- (b) to ordain the accused to find caution for good behaviour for any period not exceeding 12 months and to an amount not exceeding £150, such caution being either in lieu of or in addition to a fine or in addition to imprisonment as hereafter in this section mentioned ;
- (c) failing payment of such fine, or on failure to find such caution, to award imprisonment in accordance with section 407 of this Act;
- (d) to award imprisonment, for any period not exceeding three months.

290 When six months' imprisonment competent

Where a person is convicted by the sheriff of—

- (a) a second or subsequent offence inferring dishonest appropriation of property, or attempt thereat, or
- (b) a second or subsequent offence inferring personal violence,

he may, without prejudice to any wider powers conferred by statute, be sentenced to imprisonment for any period not exceeding six months.

291 Trial of certain offences

- (1) Any offence described in any statute as a " misdemeanour " or a " crime and offence " may be tried in the sheriff court either on indictment or summarily and, if tried summarily, the imprisonment competent on conviction shall, without prejudice to any wider powers conferred by statute, not exceed three months.
- (2) It is hereby declared that it is competent to prosecute summarily in the sheriff court the crime of uttering a forged document.
- (3) It is hereby declared that it is competent to prosecute summarily in the sheriff court crimes of robbery and assault with intent to rob.

292 Theft outside Scotland

- (1) Any person who has in his possession in Scotland property which he has stolen in any other part of the United Kingdom may be dealt with, charged, tried and punished in Scotland in like manner as if he had stolen it in Scotland.
- (2) Any person who in Scotland receives property stolen in any other part of the United Kingdom may be dealt with, charged, tried and punished in Scotland in like manner as if it had been stolen in Scotland.

293 Instructions by Lord Advocate as to reporting offences

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

Procedure prior to trial

294 Power of constable to take offenders into custody

- (1) Without prejudice to any other powers of arrest, any constable may take into custody, without warrant—
 - (a) any person who within his view commits any of the offences mentioned in Schedule 1 to this Act, if the constable does not know and cannot ascertain his name and address;
 - (b) any person who has committed, or whom he has reason to believe to have committed, any of the offences mentioned in Schedule 1 to this Act, if the constable does not know and cannot ascertain his name and address or has reasonable ground for believing that he will abscond.
- (2) Where, under the powers conferred by this section, a constable arrests any person without warrant, the superintendent or inspector of police or an officer of police of equal or superior rank, or the officer in charge of the police station to which the person is brought, shall, unless in his belief the release of the person would tend to defeat the ends of justice, or to cause injury or danger to the child (being a person under the age of 17 years) against whom the offence is alleged to have been committed, release the person arrested on his entering into an obligation to attend at the hearing of the charge or on his finding bail for such amount as may in the judgment of the officer of police be required to secure his attendance.

295 Chief constable may in certain cases accept bail

- (1) Upon the apprehension of any person charged with an offence which may be competently tried before a court of summary jurisdiction other than the sheriff court, it shall be lawful for the chief constable, or other officer of police having charge in the absence of the chief constable at any police office or station, to accept bail or deposit, by a surety or by such person, that such person shall appear for trial before such court, or before the sheriff court, at some time and place to be specified, and at all subsequent diets of court and to liberate the person so apprehended upon bail being found to an amount not exceeding £20 or upon the deposit of any money or article of value to the amount of the bail fixed.
- (2) On acceptance of deposit under the foregoing subsection the chief constable or other officer of police shall immediately enter the same in a book to be kept for the purpose, and grant an acknowledgment for the money or article so deposited, in which acknowledgment the time and place fixed for the accused's appearance shall be set forth.
- (3) The chief constable or other officer of police may refuse, in any such case as aforesaid, if he see cause, to accept bail or deposit; and such refusal, and the detention of the person so apprehended until his case is tried in the usual form, shall not subject the chief constable or other officer of police to any claim for damages, wrongful imprisonment, or claim of any other kind whatsoever.
- (4) It shall be lawful to liberate any such person as aforesaid without bail, or to discharge him, if the chief constable or other officer deem it proper so to do.
- (5) If any person fails to appear in redemption of his bail or deposit under this section, it may be forfeited and warrant may be granted for his apprehension.

296 Police liberation or detention of children arrested

- (1) Where a person who is apparently a child is apprehended, with or without warrant, and cannot be brought forthwith before a sheriff sitting summarily, a superintendent or inspector of police, or other officer of police of equal or superior rank, or the officer in charge of the police station to which he is brought, shall inquire into the case, and may liberate him on an obligation that he will attend at the hearing of the charge being entered into by him or his parent or guardian or on bail being found by him or his parent or guardian, for such an amount as will, in the opinion of the officer, secure his attendance at the hearing of the charge, and shall so liberate him unless—
 - (a) the charge is one of homicide or other grave crime ; or
 - (b) it is necessary in his interest to remove him from association with any reputed criminal or prostitute ; or
 - (c) the officer has reason to believe that his liberation would defeat the ends of justice.
- (2) Where a person who is apparently a child having been apprehended is not so liberated as aforesaid, the officer of police shall cause him to be detained in a place of safety other than a police station until he can be brought before a sheriff sitting summarily unless the officer certifies—
 - (a) that it is impracticable to do so ; or
 - (b) that he is of so unruly a character that he cannot safely be so detained ; or
 - (c) that by reason of his state of health or of his mental or bodily condition it is inadvisable so to detain him; and the certificate shall be produced to the court before which he is brought.
- (3) Where a person who is apparently a child has been detained under this section and is not so liberated as aforesaid and it is decided not to proceed with the charge against him a constable shall so inform the reporter of the local authority for the area in which the child is detained, and the child may continue to be detained in a place of safety until the reporter has decided on the course that should be taken with regard to the child under the provisions of Part III of the Social Work (Scotland) Act 1968.
- (4) A child shall not continue to be detained under this section—
 - (a) where the reporter considers the child does not require compulsory measures of care,
 - (b) after the day on which a children's hearing first sit to consider his case in pursuance of section 37(4) of the Social Work (Scotland) Act 1968, or
 - (c) for a period exceeding seven days.

297 Committal of children to custody in place of safety

- (1) Any court, on remanding or committing for trial a child who is not liberated on bail shall, instead of committing him to prison, commit him to the local authority in whose area the court is situated to be detained in a place of safety chosen by the local authority for the period for which he is remanded or until he is liberated in due course of law. Provided that in the case of a child over 14 years of age it shall not be obligatory on the court so to commit him if the court certifies that he is of so unruly a character that he cannot safely be so committed or that he is of so depraved a character that he is not a fit person to be so detained.
- (2) A commitment under this section may be varied, or, in the case of a child over 14 years of age, who proves to be of so unruly a character that he cannot safely be detained

in such custody, or to be of so depraved a character that he is not a fit person to be so detained, revoked, by the court which made the order, or if application cannot conveniently be made to that court, by a sheriff sitting summarily having jurisdiction in the place where the court which made the order sat, and if it is revoked the child may be committed to prison.

298 All offences to be bailable

- (1) All offences shall be bailable, and any judge having jurisdiction to try the offence may, at his discretion, on the application of any person who has been charged with any offence,

and after opportunity shall have been given to the prosecutor to be heard thereon, admit or refuse to admit such person to bail.
- (2) Such application shall be disposed of within 24 hours after its presentation to the judge, failing which the accused shall be forthwith liberated.

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

- (1) The following provisions of this section shall apply where a court has refused to admit a person to bail or, where a court has so admitted a person, the bail fixed in his case has not been found.
- (2) A court shall, on the application of any such person as aforesaid, have power to review its decision to admit to bail or its decision as to the bail fixed and may, on cause shown, admit the person to bail or, as the case may be, fix bail at a lower amount.
- (3) An application under this section, where it relates to the original decision of the court, shall not be made before the fifth day after that decision and, where it relates to a subsequent decision, before the fifteenth day thereafter.
- (4) Nothing in the provisions of this section shall affect any right of a person to appeal against the decision of a court in relation to admitting to bail or to the bail fixed.
- (5) In the foregoing provisions of this section, any reference to bail includes a reference to caution for interim liberation and any reference to admitting to bail shall include a reference to ordering the finding of caution as aforesaid.

300 Appeal in respect of bail

- (1) Where an application for bail by a person charged with an offence under this Part of this Act is refused or where the applicant is dissatisfied with the amount of bail fixed, he may appeal to the High Court and that court may in its discretion order intimation to the prosecutor and, where an application for bail by any such person is granted, the prosecutor, if dissatisfied with the granting of bail or with the amount fixed may appeal in like manner and, subject as hereinafter provided, the applicant shall in such case not be liberated before such appeal is disposed of.
- (2) Notice in writing shall be immediately given by the party appealing under this section to the other party.
- (3) An appeal under this section shall be disposed of by the High Court or any Lord Commissioner of Justiciary in court or in chambers after such inquiry and hearing of the parties as shall seem just.

- (4) When an appeal is taken by the prosecutor under this section either against the grant of bail or against the amount fixed, the applicant to whom bail has been granted shall, if the bail fixed shall have been found by him, be liberated after 72 hours, or where the place of application is in the Outer Hebrides or in Orkney or Zetland 96 hours, from the granting of the application, whether the appeal be disposed of or not, unless the High Court shall grant order for his further detention in custody. In computing the aforesaid periods, Sundays and public holidays, whether, general or court holidays, shall be excluded.
- (5) Notice by telegraph to the governor of the prison of the issue under the last foregoing subsection of an order within the time aforesaid bearing to be sent by the Clerk of Justiciary or the Crown Agent or, if the complaint is brought in a court other than the sheriff court, by the prosecutor shall be sufficient warrant for the detention of the applicant pending the arrival of the order in due course of post.
- (6) Where an appeal under this section by the prosecutor is refused, the High Court may award expenses against him, but no court or other fees shall be exigible from, and no expenses shall be awarded against, an applicant in respect of his application or of any appeal therein.

301 Power of court to refund bail

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

302 Citation of persons liberated on bail at domiciles specified in bail bonds

All bail bonds whatsoever received in order to obtain the liberation of accused persons from custody shall specify the domicile at which such persons may thereafter be cited for trial before any criminal court.

303 Caution and bail

- (1) With regard to the finding, forfeiture, and recovery of caution in any proceedings under this Part of this Act the following provisions shall apply:—
- (a) caution may be found by consignment of the amount with the clerk of court, or by bond of caution, which bond may be signed by the mark of the cautioner;
 - (b) where caution becomes liable to forfeiture, forfeiture may be granted by the court on the motion of the prosecutor, and, where necessary, warrant granted for the recovery thereof;
 - (c) in the event of any cautioner failing to pay the amount due under his bond within six days after he has received a charge to that effect, the court may order him to be imprisoned for the maximum period applicable in pursuance of section 407 of this Act to that amount or until payment is made; or the court, if it shall adjudge it expedient, may on the application of the cautioner grant time for payment or may instead of imprisonment order recovery by civil diligence in accordance with section 411 of this Act.
- (2) Bail may be found and forfeited, and the like procedure shall be competent in default of payment thereof as is hereinbefore provided with regard to caution; and any bail

found shall continue in force until the final determination of the case or until the expiry of six months from the date when such bail is found, whichever shall first occur, notwithstanding that the diets may have been from time to time continued or deserted pro loco et tempore, or not called :

Provided that the cautioner shall be entitled to withdraw his bond of caution at any diet of the court at which the accused appears personally.

- (3) Where, instead of being liberated on bail, the accused in a summary prosecution is liberated under a penalty in the event of his failure to appear at any future diet, and such penalty is declared to be forfeited, the amount thereof may be added to any other penalty subsequently imposed on him, or the court may pronounce a separate finding in respect of such penalty and may grant warrant for the imprisonment of the accused in the event of non-payment thereof.

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

- (1) Where a child has been charged with any offence the court may order his parent or guardian to give security for his cooperation in securing the child's good behaviour.
- (2) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.
- (3) Any sums ordered on forfeiture of any such security as aforesaid to be paid by a parent or guardian may be recovered from him by civil diligence or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child was charged.

305 Intimation to solicitor

In any proceedings under this Part of this Act the accused, if apprehended, shall immediately on apprehension be entitled, if he so desires, to have intimation sent to a solicitor, and to have a private interview with such solicitor prior to being brought before the court.

306 Separation of children from adults at courts, etc.

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

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

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

- (2) Where the child is arrested, the constable by whom he is arrested or the officer of police in charge of the police station to which he is brought shall cause the parent or guardian of the child, if he can be found, to be warned to attend at the court before which the child will appear.
- (3) For the purpose of enforcing the attendance of a parent or guardian and enabling him to take part in the proceedings and enabling orders to be made against him, rules may be made under section 457 of this Act, for applying, with the necessary adaptations and modifications, such of the provisions of this Part of this Act as appear appropriate for the purpose.
- (4) The parent or guardian whose attendance shall be required under this section shall be the parent or guardian having the actual possession and control of the child:

Provided that, if that person is not the father, the attendance of the father may also be required.
- (5) The attendance of the parent of a child shall not be required under this section in any case where the child was before the institution of the proceedings removed from the custody or charge of his parent by an order of a court.

308 Notice to local authority of charge against a child

- (1) Where a child is to be brought before a court, notification of the day and hour when, and the nature of the charge on which, the child is to be so brought shall be sent by the chief constable of the area in which the offence is alleged to have been committed to the local authority for the area in which the court will sit.
- (2) Where a local authority have received a notification under the foregoing subsection they shall make such investigations and render to the court a report which shall contain such information as to the home surroundings of the child as appear to them will assist the court in the disposal of his case, and the report shall contain information, which the appropriate education authority shall have a duty to supply, as to the school record, health and character of the child.

309 Forms of procedure

- (1) The forms of procedure under this Part of this Act shall be in the forms set out in Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act or as nearly as may be in such forms.
- (2) Warrants of apprehension and search shall be signed by the judge granting the same, but all other warrants, orders of court, and sentences may be signed either by the judge or by the clerk of court, and execution upon any warrant, order of court, or sentence may proceed either upon such warrant, order of court, or sentence itself or upon an extract thereof issued and signed by the clerk of court.
- (3) Where, as preliminary to any procedure, a sworn information is required, such information may be sworn to before any judge, whether the subsequent procedure be in his court or another court.

310 Incidental applications

Where prior to the presentation of a complaint it is necessary to apply to a court for any warrant or order of court as incidental to subsequent proceedings by complaint, or where a court has power to grant any warrant or order of court, although no subsequent proceedings by complaint may follow thereon, such application, may be by petition at the instance of a prosecutor in the form set out in Part I of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act or as nearly as may be in such form and, where necessary for the execution of any such warrant or order of court, warrant to break open lockfast places shall be implied.

311 Complaint

- (1) All proceedings under this Part of this Act for the trial of offences or recovery of penalties shall be instituted by complaint in the form set out in Part II of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act or as nearly as may be in such form.
- (2) Such complaint shall be signed by the prosecutor or by any solicitor on behalf of a prosecutor other than the public prosecutor of a court.
- (3) A solicitor may appear for and conduct any prosecution on behalf of a prosecutor other than the public prosecutor of a court.
- (4) A complaint at the instance of a private prosecutor for an offence at common law or for a statutory offence where imprisonment without the option of a fine is competent shall, unless otherwise provided in any statute, require the concurrence of the public prosecutor of the court in which the complaint is brought.
- (5) Where a complaint includes any statutory charge a notice in the form set out in Form No. 1 of Part III of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in the corresponding form set out in an Act of Adjournal under this Act or as nearly as may be in such form shall be served on the accused with the complaint when he is cited to a diet, and where he is in custody the complaint and such a notice shall be served on him before he is asked to plead, and a copy of any notice so served shall, where the judge is satisfied that the charge is proved, be laid before him by the prosecutor, and shall be entered in the record of the proceedings.

312 Form of the charge in complaint

The charge in a complaint under this Part of this Act shall be stated in the form, as nearly as may be, of the appropriate form contained in Part II of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act. No further specification shall be required than a specification similar to that given in that form and—

- (a) a person accused may be named and designed according to the existing practice, or he may be named by the name given by him and designed as of the place given by him as his residence when he is examined on declaration, and it shall not be necessary to set forth any other name or names by which he may be known, or any other address or designation ;
- (b) it shall not be necessary to specify by any nomen juris the offence which is charged, but it shall be sufficient that the complaint sets forth facts relevant and sufficient to constitute an offence punishable on complaint;

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- (c) when two or more persons are charged together with committing an offence punishable on complaint, it shall not be necessary to allege that " both and each or one or other," or that " all and each or one or more " of them committed the offence, or did or failed to do any particular act, but such alternatives shall be implied;
- (d) it shall not be necessary to state that a person accused is " guilty, actor or art and part", but such charge shall be implied;
- (e) it shall not be necessary to allege that any act of commission or omission therein charged was done or omitted to be done
- “wilfully”or " maliciously ", or " wickedly and feloniously ", or " falsely and fraudulently ", or " knowingly", or " culpably and recklessly ", or " negligently ", or in " breach of duty ", or to use such words as " knowing the same to be forged ", or " having good reason to know ", or " well knowing the same to have been stolen ", or to use any similar words or expressions qualifying any act charged, but such qualifying allegation shall be implied;
- (f) the latitude in use to be taken in stating time shall be implied in all statements of time where an exact time is not of the essence of the charge, and the latitude in use to be taken in stating any place by adding to the word
- “at”, or to the word " in ", the words " or near", or the words " or in the near neighbourhood thereof ", or similar words, shall be implied in all statements of place where the actual place is not of the essence of the charge, and where the circumstances of the offence charged make it necessary to take an exceptional latitude in regard to time or place it shall not be necessary to set forth such circumstances, or to set forth that the particular time or the particular place is to the prosecutor unknown ; provided that where exceptional latitude is taken, the court shall, if satisfied that such exceptional latitude was not reasonable in the circumstances of the case, give such remedy to the accused by adjournment of the trial or otherwise as shall seem just;
- (g) the latitude in use to be taken in describing quantities by the words " or thereby ", or the words " or part thereof ", or the words " or some other quantity to the prosecutor unknown " or similar words, shall be implied in all statements of quantities, and the latitude in use to be taken in stating details connected with the perpetration of any act regarding persons, things or modes by inserting general alternative statements followed by the words
- “to the prosecutor unknown”, or similar words, shall be implied ;
- (h) where in a complaint, whether raised under statute or at common law, buildings, goods, money, or property of any other description are mentioned, it shall not be necessary to allege the property or possession thereof to be in any person, official, corporation or company, or that the same were not the property of the accused, and the allegation that the same were not the property of the accused shall be implied where it is essential to the criminality of the charge;
- (i) where in a complaint or any list or inventory relative thereto any person is referred to, it shall be sufficient to describe him by his name and ordinary address, and it shall not be necessary to describe him as " now or lately " residing at such address, but such words shall be implied, and where goods, articles or things require to be described, it shall be sufficient to describe them in general terms without specifying the materials of which they are made, or any particulars which distinguish them from other goods, articles or things of

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a similar kind except in cases in which such particulars are essential to the constitution of the offence charged ;

- (j) the word " money " shall include all current coin of the realm, post office orders and postal orders, and bank or banker's notes, and it shall not be necessary to specify in relation to a sum of money whether such sum consisted of gold, silver or other coin, post office orders or postal orders, or bank or banker's notes, or any of them, but it shall be sufficient to state the sum as consisting of money ;
- (k) where any document requires to be referred to, it shall not be necessary to set forth the document or any part of it, but it shall be sufficient to refer to such document by a general description ;
- (l) criminal resetting of property shall not be limited to the -receiving of property taken by theft or robbery, but shall extend to the receiving of property appropriated by breach of trust and embezzlement, and by falsehood fraud and wilful imposition, and under any complaint charging the resetting of property dishonestly appropriated by any of these means, it shall not be necessary to set forth any details of the offence by which the dishonest appropriation was accomplished, but it shall be sufficient to set forth that the accused received such property, it having been dishonestly appropriated by theft or robbery, or by breach of trust and embezzlement, or by falsehood fraud and wilful imposition, as the case may be ;
- (m) under a complaint for robbery, or for theft, or for breach of trust and embezzlement, or for falsehood fraud and wilful imposition, a person accused may be convicted of reset; under a complaint for robbery, or for breach of trust and embezzlement, or for falsehood fraud and wilful imposition, a person accused may be convicted of theft; under a complaint for theft, a person accused may be convicted of breach of trust and embezzlement, or of falsehood fraud and wilful imposition, or may be convicted of theft, although the circumstances proved may in law amount to robbery. The power conferred by the last foregoing paragraph to convict a person of an offence other than the offence charged in a complaint shall be exercisable by the sheriff court before which such person is tried notwithstanding that that other offence was committed outside the jurisdiction of that sheriff court;
- (n) where two or more offences or acts constituting offences are charged cumulatively, it shall be lawful to convict of any one or more of them, and any part of what is charged in a complaint, constituting in itself an offence punishable on complaint, shall be deemed separable to the effect of making it lawful to convict of such offence, and where any offence is charged as having been committed with a particular intent or with particular circumstances of aggravation, it shall be lawful to convict of the offence without such intent or aggravation;
- (o) attempt to commit any offence punishable on complaint shall itself be an offence punishable on complaint, and under a complaint which charges a completed offence the accused may be lawfully convicted of an attempt to commit such offence; and under a complaint charging an attempt, the accused may be convicted of such attempt although the evidence be sufficient to prove the completion of the offence said to have been attempted; and under a complaint charging an offence which imports personal injury inflicted by the accused, resulting in death or serious injury to the person, the accused may be lawfully convicted of the assault or other injurious act, and may also be lawfully convicted of the aggravation that such assault or other injurious act was committed with intent to commit such offence ;

- (p) the description of any offence in the words of the statute or order contravened, or in similar words, shall be sufficient;
- (q) the statement that an act was done contrary to a statute or order shall imply a statement that the statute or order applied to the circumstances existing at the time and place of the offence, that the accused was a person bound to observe the same, that any necessary preliminary procedure had been duly gone through, and that all the circumstances necessary to a contravention existed; in the case of the contravention of an order, such statement shall imply a statement that the order was duly made, confirmed, published and generally made effectual according to the law applicable, and was in force at the time and place in question;
- (r) where the offence is created by more than one section of one or more statutes or orders, it shall be necessary to specify only the leading section or one of the leading sections;
- (s) it shall not be necessary for an offence punishable under any Act of Parliament to quote the Act of Parliament or any part of it, but it shall be sufficient to allege that the offence was committed contrary to such Act of Parliament, and to refer to the Act and any section of the Act founded on without setting forth the enactment at length;
- (t) where any act set forth in a complaint as contrary to any Act of Parliament is also criminal at common law, or where the facts proved under such a complaint do not amount to a contravention of the statute, but do amount to an offence at common law, it shall be lawful to convict of the common law offence;
- (u) when in a trial the evidence shall be sufficient to prove the identity of any person, corporation or company, or of any place, or of any thing, it shall not be a valid objection to the sufficiency of such evidence that any particulars set forth in regard thereto in the complaint have not been proved ;
 - (v) any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany in the same section the description of the offence in the statute or order creating the offence, may be proved by the accused, but need not be specified or negatived in the complaint, and no proof in relation to such exception, exemption, proviso, excuse or qualification shall be required on behalf of the prosecution;
- (w) it shall be competent to include in one complaint both common law and statutory charges ;
 - (x) where an offence is alleged to be committed in any special capacity, as by the holder of a licence, master of a vessel, occupier of a house or the like, the fact that the accused possesses the qualification necessary to the commission of the offence shall, unless challenged by preliminary objection before his plea is recorded, be held as admitted;
- (y) in any proceedings under the Merchant Shipping Acts it shall not be necessary to produce the official register of the ship referred to in the proceedings in order to prove the nationality of the ship, but the nationality of the ship as stated in the complaint shall, in the absence of evidence to the contrary, be presumed;
- (z) in offences inferring dishonest appropriation of property brought before a court whose power to deal with such offences is limited to cases in which the value of such property does not exceed £10 it shall be assumed, and it shall not be necessary to state in the charge, that the value of the property does not exceed that sum.

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

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

314 Orders of court on complaint

- (1) On any complaint under this Part of this Act being laid before a judge of the court in which the complaint is brought, he shall have power on the motion of the prosecutor—
 - (a) to pronounce an order of court assigning a diet for the disposal of the case to which the accused may be cited as after-mentioned;
 - (b) to grant warrant to apprehend the accused where this appears to the judge expedient;
 - (c) to grant warrant to search the person, dwelling-house and repositories of the accused and any place where he may be found for any documents, articles, or property likely to afford evidence of his guilt of, or guilty participation in, any offence charged in the complaint, and to take possession of such documents, articles or property;
 - (d) to grant any other order of court or warrant or interim order of court of warrant which may be competent in the circumstances.
- (2) The power under the foregoing subsection to grant a warrant to apprehend the accused shall be exercisable notwithstanding that there is power whether at common law or under any Act to apprehend him without a warrant.
- (3) Where a diet has been fixed in a summary prosecution, it shall be competent for the court, on a joint application in writing by the parties or their solicitors, to discharge the diet so fixed and fix in lieu thereof an earlier or a later diet.

315 Citation

- (1) This Act shall be a sufficient warrant for the citation of the accused and witnesses in a summary prosecution to any ordinary sitting of the court or to any special diet fixed by the court or any adjournment thereof.
- (2) Such citation shall be in the form, as nearly as may be, of the appropriate form contained in Part IV of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournment under this Act and shall in the case of the accused proceed

on an *induciae* of at least 48 hours unless in the special circumstances of the case the court fixes a shorter *induciae*.

- (3) The foregoing provisions of this section as to the citation of witnesses shall apply to the citation of witnesses for precognition by the prosecutor where a judge on the application of such prosecutor shall deem it expedient to grant warrant to cite witnesses for precognition in regard to any offence which may be competently tried in the court of that judge, and whether or not any person has at the time of such application been charged with such offence.

316 Manner of citation

- (1) The citation of the accused and witnesses in a summary prosecution to any ordinary sitting of the court or to any special diet fixed by the court or to any adjourned sitting or diet of such court shall be effected as provided in this section.
- (2) It shall be deemed a legal citation of the accused or a witness to such a sitting or diet or adjourned sitting or diet as is mentioned in the foregoing subsection:—
- (a) if the citation be delivered to him personally or left for him at his dwelling-house or place of business with some person resident or employed therein or, where he has no known dwelling-house or place of business, at any other place in which he may at the time be resident,
 - (b) where the accused or witness is the master of, or a seaman or person employed in a vessel, if the citation is left with a person on board thereof and connected therewith,
 - (c) where the accused is a company, association or corporation, if the citation is left at their ordinary place of business with a partner, director, secretary or other official, or if the company, association or corporation is cited in the same manner as if the proceedings were in a civil court, or
 - (d) where the accused is a body of trustees, if the citation is left with any one of them who is resident in Scotland or with their known solicitor in Scotland.
- (3) It shall be deemed a legal citation of the accused to such a sitting or diet or adjourned sitting or diet as is mentioned in subsection (1) hereof, if the citation be signed by the prosecutor and sent by post in a registered envelope or through the recorded delivery service to the dwelling-house or place of business of such accused, or, if he has no known dwelling-house or place of business, to any other place in which he may at the time be resident:

Provided that, if the accused shall fail to appear at a diet or sitting or adjourned diet or sitting to which he has been cited in the manner provided by this subsection, paragraphs (b) and (c) of section 338 of this Act shall not apply unless it shall have been proved to the court that he received the citation or that the contents thereof came to his knowledge.

- (4) The production in court of any letter or other communication purporting to be written by or on behalf of an accused who has been cited in the manner provided in subsection (3) hereof in such terms as to infer that the contents of such citation came to his knowledge, shall be admissible as evidence of that fact for the purposes of the proviso to that subsection.

317 Citation of probationer

The citation of a probationer to appear before a court of summary jurisdiction in terms of section 387(1) or 388(1) of this Act shall be effected in like manner, *mutatis mutandis*, as the citation of an accused to a sitting or diet of the court.

318 Citation of offender

- (1) The citation of an offender to appear before a court of summary jurisdiction in terms of section 398(2)(c) of this Act shall be effected in like manner, *mutatis mutandis*, as the citation of an accused to a sitting or diet of the court:

Provided that the citation shall be signed by the clerk of the court before which the offender is required to appear, instead of by the prosecutor, and provided also that the forms contained in Part IV of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 and the corresponding forms contained in an Act of Adjournal under this Act shall not apply to such citation.

- (2) The citation of such an offender shall be in the appropriate form contained in an Act of Adjournal under this Act, or as nearly as may be in such form.
- (3) If the citation of such an offender shall have been effected by an officer of law, the written execution, if any, of that officer of law shall be in the appropriate form contained in an Act of Adjournal under this Act, or as nearly as may be in such form.

319 Citation by post

- (1) When the citation of any person other than a witness is effected by post in terms of any of the foregoing provisions of this Act, the *induciae* shall be reckoned from 24 hours after the time of posting.
- (2) It shall be sufficient evidence that a citation has been sent by post in terms of any of the foregoing provisions of this Act, if there is produced in court a written execution, signed by the person who signed such citation and in the appropriate form contained in an Act of Adjournal under this Act, or as nearly as may be in such form, together with the post office receipt for the relative registered or recorded delivery letter.

320 Apprehension of witness

Where a witness after being duly cited fails to appear at the diet fixed for his attendance and no just excuse is offered on his behalf, the court may issue a warrant for his apprehension ; or the court, if satisfied by evidence on oath that a witness is not likely to attend to give evidence without being compelled so to do, may issue a warrant for his apprehension in the first instance.

321 Warrants of apprehension and search

- (1) A warrant of apprehension or search may be in the form, as nearly as may be, of the appropriate form contained in Part IV of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act, and any warrant of apprehension or search shall, where it is necessary for its execution, imply warrant to officers of law to break open shut and lockfast places.

- (2) A warrant of apprehension of an accused person in such form as aforesaid shall imply warrant to officers of law to search for and to apprehend the accused, and to bring him before the court issuing the warrant, or before any other court competent to deal with the case, to answer to the charge on which such warrant is granted, and, in the meantime, until he can be so brought, to detain him in a police station house, police cell, or other convenient place.
- (3) A person apprehended under any such warrant as aforesaid or by virtue of the powers possessed at common law, or conferred by statute, shall wherever practicable be brought before a court competent to deal with the case either by way of trial or by way of remit to another court not later than in the course of the first lawful day after such person shall be taken into custody, such day not being a public or local holiday.
- (4) A warrant of apprehension or other warrant shall not be required for the purpose of bringing before the court an accused person who had been apprehended without a written warrant or who attends without apprehension in answer to any charge made against him.
- (5) A warrant of apprehension of a witness in the appropriate form shall imply warrant to officers of law to search for and apprehend the witness, and to detain him in a police station house, police cell, or other convenient place, until the date fixed for the hearing of the case, unless sufficient security be found, to the amount fixed in the warrant for the appearance of such witness at all diets of court.

322 Warrants for arrest of escaped prisoners and mental patients

- (1) On an application being made to a sheriff or justice alleging that any person is—
 - (a) an offender unlawfully at large from a prison or other institution to which the Prison Act applies in which he is required to be detained after being convicted of an offence ; or
 - (b) a convicted mental patient liable to be retaken under section 40 or 140 of the Mental Health Act 1959, section 36 or 106 of the Mental Health (Scotland) Act 1960 or section 30 or 108 of the Mental Health Act (Northern Ireland) 1961 (retaking of mental patients who are absent without leave or have escaped from custody);
 the sheriff or justice may issue a warrant to arrest him and bring him before any sheriff.
- (2) Where a person is brought before a sheriff in pursuance of a warrant for his arrest under this section, the sheriff shall, if satisfied that he is the person named in the warrant and if satisfied as to the facts mentioned in paragraph (a) or (b) of the foregoing subsection, order him to be returned to the prison or other institution where he is required or liable to be detained or, in the case of a convicted mental patient, order him to be kept in custody or detained in a place of safety pending his admission to hospital.
- (3) Section 139 of the Mental Health Act 1959, section 105 of the Mental Health (Scotland) Act 1960 and section 107 of the Mental Health Act (Northern Ireland) 1961 (custody, conveyance and detention of certain mental patients) shall apply to a convicted mental patient required by this section to be conveyed to any place or to be kept in custody or detained in a place of safety as they apply to a person required by or by virtue of the said Act of 1959, 1960 or 1961, as the case may be, to be so conveyed, kept or detained.
- (4) In this section—

" convicted mental patient" means a person liable after being convicted of an offence to be detained under Part V of the Mental Health Act 1959, Part V of the Mental Health (Scotland) Act 1960, Part III of the Mental Health Act (Northern Ireland) 1961 or section 330, 376, 378 or 379 of this Act in pursuance of a hospital order or transfer direction together with an order or direction restricting his discharge;

" place of safety " has the same meaning as in Part V of the said Act of 1959, or Part III of the said Act of 1961, or section 462 of this Act as the case may be;

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

323 Warrant to search for or remove a child

- (1) If, on an application to a justice by any person who, in the opinion of the justice, is acting in the interests of a child, it appears to the justice on information on oath that there is reasonable cause to suspect—
 - (a) that the child has been or is being assaulted, ill-treated, or neglected in any place within the jurisdiction of the justice, in a manner likely to cause him unnecessary suffering or injury to health, or
 - (b) that any offence mentioned in Schedule 1 to this Act has been or is being committed in respect of the child, the justice may issue a warrant authorising any constable named therein to search for the child and, if it is found that he has been or is being assaulted, ill-treated or neglected in manner aforesaid, or that any such offence as aforesaid has been or is being committed in respect of him, to take him to and detain him in a place of safety, or authorising any constable to remove him with or without search to a place of safety and detain him there.
- (2) A child shall not continue to be detained under the last foregoing subsection—
 - (a) where the reporter considers the child does not require compulsory measures of care, or
 - (b) after the day on which a children's hearing first sit to consider his case in pursuance of section 37(4) of the Social Work (Scotland) Act 1968, or
 - (c) for a period exceeding seven days.
- (3) A justice issuing a warrant under this section may by the same warrant cause any person accused of any offence in respect of the child to be apprehended and brought before the sheriff, and proceedings to be taken against him according to law.
- (4) Any constable authorised by warrant under this section to search for or, with or without search, to remove any child may enter (if need be by force) any house, building, or other place specified in the warrant, and may remove him therefrom.
- (5) Every warrant issued under this section shall be addressed to and executed by a constable, who shall be accompanied by the person making the application if that person so desires, unless the justice by whom the warrant is issued otherwise directs, and may also, if the justice by whom the warrant is issued so directs, be accompanied by a duly qualified medical practitioner.
- (6) It shall not be necessary in any application, information or warrant under this section to name the child.

324 Backing of certain warrants from the Isle of Man

- (1) A warrant issued in the Isle of Man for the arrest of a person charged with an offence may, after it has been endorsed by a justice in Scotland, be executed there by the person bringing that warrant, by any person to whom the warrant was originally directed or by any officer of law of the sheriff court district where the warrant has been endorsed as aforesaid in like manner as any such warrant issued in Scotland.
- (2) In this section " endorsed " means endorsed in the like manner as a process to which section 4 of the Summary Jurisdiction (Process) Act 1881 applies.

325 Execution of Scottish warrants in England and vice versa

- (1) A warrant issued in Scotland for the apprehension of a person charged with an offence may be executed in England by any constable acting within his police area ; and subsections (3) and (4) of section 102 of the Magistrates' Courts Act 1952 (execution on Sunday and execution without possession of the warrant) shall apply to the execution in England of any such warrant.
- (2) A warrant issued in England for the arrest of a person charged with an offence may be executed in Scotland by any constable appointed for a police area in like manner as any such warrant issued in Scotland.
- (3) A warrant may be executed by virtue of this section whether or not it has been endorsed under section 14 or 15 of the Indictable Offences Act 1848.
- (4) Nothing in this section affects the execution in Scotland of a warrant to which section 123 of the Bankruptcy Act 1914 applies.

326 Service of complaints, etc.

- (1) Any complaint, warrant, or other proceeding under this Part of this Act may without endorsement be served or executed at any place within Scotland by any officer of law, and such service or execution may be proved either by the oath in court of such officer or by production of his written execution. The Indictable Offences Act 1848 and the Indictable Offences Act Amendment Act 1868 shall, for the purpose of this Part of this Act, apply to all offences which may be tried by the court issuing any competent warrant, order of court, or other process.
- (2) Nothing in section 6(3) (extent) of the Magistrates' Courts Act 1957 or in the Summary Jurisdiction (Process) Act 1881 shall be construed as precluding the service in Scotland, with a summons which is so served under the said Act of 1881, of any such notice or statement as is mentioned in subsection (1) of section 1 of the said Act of 1957 (plea of guilty in absence of accused).

327 Sheriff's warrant may be executed out of district

- (1) Any warrant granted by a sheriff against—
 - (a) a person charged with having committed a crime or offence within the jurisdiction of that sheriff; or
 - (b) a person as being in *meditatione fugae*,shall be sufficient for the apprehension of that person within any other sheriff court district, and for conveying and disposing of him in terms of the warrant, without the necessity of its being backed or endorsed by any other justice.

- (2) Such warrant may be executed throughout Scotland in like manner as it may be executed within the jurisdiction of the sheriff who granted the warrant.

328 Adjourment for inquiry, etc.

A court of summary jurisdiction, in order to allow time for inquiry into any case, or for any other necessary cause, and

without calling on the accused to plead to any charge against him, may from time to time continue the case for such reasonable time as may in the circumstances be necessary, not exceeding in all a period of seven days, or on special cause shown 21 days, from the date of the apprehension of the accused, and may liberate him on bail or commit him to prison, either without bail or with bail to an amount fixed by the court: Provided that no judge shall be entitled to allow bail in a case which he is not competent to try.

329 Remand and committal of persons under 21

- (1) Where a court remands or commits for trial or for sentence a person under 21 years of age who is charged with or convicted of an offence and is not released on bail, then, except as otherwise expressly provided by this section, the following provisions shall have effect, that is to say—
- (a) subject to the following paragraph, if he is under 16 years of age the court shall commit him to the local authority in whose area the court is situated, and the authority shall have the duty of placing him in a suitable place of safety chosen by the authority instead of committing him to prison ;
 - (b) if he is a person of over 16 years of age, or a child under 16 years of age but over 14 years of age who is certified by the court to be unruly or depraved, and the court has been notified by the Secretary of State that a remand centre is available for the reception from that court of persons of his class or description, he shall be committed to a remand centre instead of being committed to prison.
- (2) Where any person is committed to a local authority or to a remand centre under any provision of this Act, that authority or centre shall be specified in the warrant, and he shall be detained by the authority or in the centre for the period for which he is committed or until he is liberated in due course of law.
- (3) Where any person has been committed to a local authority under any provision of this Act, the court by which he was committed, if the person so committed is not less than 14 years of age and it appears to the court that he is unruly or depraved, may revoke the commitment and commit the said person—
- (a) if the court has been notified that a remand centre is available for the reception from that court of persons of his class or description, to a remand centre; and
 - (b) if the court has not been so notified, to a prison.
- (4) Where, in the case of a person under 16 years of age who has been committed to prison or to a remand centre under this section, the sheriff is satisfied that his detention in prison or a remand centre is no longer necessary, he may revoke the commitment and commit the person to the local authority in whose area the court is situated, and the authority shall have the duty of placing him in a suitable place of safety.

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

- (1) Where a court remands or commits for trial a person charged with any offence who appears to the court to be suffering from mental disorder, and the court is satisfied that a hospital is available for his admission and suitable for his detention, the court may, instead of remanding him in custody, commit him to that hospital.
- (2) Where any person is committed to a hospital as aforesaid, the hospital shall be specified in the warrant and, if the responsible medical officer is satisfied that he is suffering from mental disorder of a nature or degree which warrants his admission to a hospital under Part IV of the Mental Health (Scotland) Act 1960, he shall there be detained for the period for which he is remanded or the period of committal, unless before the expiration of that period he is liberated in due course of law.
- (3) When the responsible medical officer has examined the person so detained he shall report the result of that examination to the court and, where the report is to the effect that the person is not suffering from mental disorder of such a nature or degree as aforesaid, the court may commit him to any prison or other institution to which he might have been committed had he not been committed to hospital or may otherwise deal with him according to law.
- (4) No person shall be committed to a hospital under this section except on the written or oral evidence of a medical practitioner.

331 Statutory offences time-limit

- (1) Proceedings under this Part of this Act in respect of the contravention of any statute or order shall, unless the statute or order under which the proceedings are brought fixes any other period, be commenced within six months after the contravention occurred and, in the case of a continuous contravention, within six months after the last date of such contravention, and it shall be competent in such case in any prosecution to include the entire period during which the contravention has occurred.
- (2) A person shall not be summarily convicted of an offence mentioned in Schedule 1 to this Act unless the offence was wholly or partly committed within six months before the proceedings against him in respect of the offence were commenced; but, subject as aforesaid, evidence may be taken of acts constituting, or contributing to, the offence and committed at any previous time.
- (3) For the purposes of this section proceedings shall be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted, if such warrant is executed without undue delay.

332 Power to recover penalties

- (1) All penalties, for the recovery of which no special provision has been made by statute or order, may be recovered by the public prosecutor in any court having jurisdiction.
- (2) Where a court has power to take cognisance of an offence the penalty attached to which is not defined, the punishment therefore shall be regulated by that applicable to common law offences in that court.

333 Offences by companies, etc.

With regard to the summary prosecution of offences committed by a company, association, incorporation or body of trustees, the following provisions shall, without prejudice to any other or wider powers conferred by statute, apply:—

- (a) proceedings may be taken against the company, association, incorporation or body of trustees in their corporate capacity, and in that event any penalty imposed shall be recovered by civil diligence in manner hereinafter provided; or
- (b) proceedings may be taken against an individual representative of such company, association or incorporation as follows:—
 - (i) in the case of an ordinary company or firm, any one of the partners thereof, or the manager or the person in charge or locally in charge of the affairs thereof, may be dealt with as if he was the person offending;
 - (ii) in the case of an association, incorporation or incorporated company, the managing director or the secretary or other person in charge, or locally in charge, of the affairs thereof, may be dealt with as if he was the person offending;
 - (iii) the offence shall be deemed to be the offence of such company, association or incorporation.

Trial Procedure

334 Procedure at first diet, etc.

- (1) Where the accused is present at the first calling of the case in a summary prosecution, and—
 - (a) the complaint has been served on him, or
 - (b) the complaint or the substance thereof has been read to him, or
 - (c) he has legal assistance in his defence,he shall be asked to plead in common form, and he may, prior to pleading, state objections to the competency or relevancy of the complaint or the proceedings and no such objections shall be allowed to be stated at any future diet in the case except with the leave of the court, which may be granted only on cause shown.
- (2) Objections to the competency or relevancy of a summary complaint or the proceedings thereon may, in the absence of the accused, be stated by counsel or by a solicitor on his behalf, and where such objections are so stated the provisions of this Part of this Act shall apply in like manner as if the accused had appeared and stated the objections.
- (3) Where the accused is not present at a calling of the case in a summary prosecution and either—
 - (a) the prosecutor produces to the court written intimation that the accused pleads not guilty or pleads guilty and the court is satisfied that such written intimation has been made or authorised by the accused, or
 - (b) a solicitor, or a person not being a solicitor who satisfies the court that he is authorised by the accused, appears on behalf of the accused and tenders a plea of not guilty or a plea of guilty,then—

- (i) in the case of a plea of not guilty, the provisions of this Part of this Act except paragraph (a) of section 337 shall apply in like manner as if the accused had appeared and tendered the plea, and
 - (ii) in the case of a plea of guilty, the court may, if the prosecutor accepts the plea, proceed to hear and dispose of the case in the absence of the accused in like manner as if he had appeared and pled guilty, or may, if it thinks fit, continue the case to another diet and require the attendance of the accused with a view to pronouncing sentence in his presence.
- (4) Where in pursuance of paragraph (ii) of the last foregoing subsection the court proceeds to hear and dispose of a case in the absence of the accused, it shall not pronounce a sentence of imprisonment or of Borstal training or of detention in a detention centre, young offenders institution, remand centre, or other establishment.
- (5) In this section a reference to a plea of guilty shall include a reference to a plea of guilty to a part only of the charge:
- Provided that where such a plea is not accepted by the prosecutor it shall be deemed to be a plea of not guilty.
- (6) It shall not be competent for any person appearing to answer a complaint, or for a solicitor appearing for the accused in his absence, to plead want of due citation or informality therein or in the execution thereof.

335 Amendment of complaint

- (1) It shall be competent at any time prior to the determination of a summary prosecution, unless the court sees just cause to the contrary, to amend the complaint or any notice of penalty or previous conviction relative thereto by deletion, alteration or addition so as to cure any error or defect therein, or to meet any objection thereto, or to cure any discrepancy or variance between the complaint or notice and the evidence.
- (2) Nothing in this section shall authorise an amendment which changes the character of the offence charged, and if the court shall be of opinion that the accused may in any way be prejudiced in his defence on the merits of the case by any amendment made under this section, the court shall grant such remedy to the accused by adjournment or otherwise as it shall think just.
- (3) An amendment made under this section shall be sufficiently authenticated by the initials of the clerk of court.

336 Plea of guilty

Where the accused in a summary prosecution pleads guilty to the charge or to any part thereof, and his plea is accepted by the prosecutor, the plea shall be recorded and signed by the judge or clerk of court, and the court shall thereafter dispose of the case at the same or any adjourned diet. The plea and sentence may be combined, in which case one signature shall be sufficient to authenticate both.

337 Plea of not guilty

Where the accused in a summary prosecution pleads not guilty to the charge or guilty to part only thereof, and the prosecutor does not accept such partial plea, the following provisions shall apply:—

- (a) the court may proceed to trial at once unless either party moves for an adjournment and the court shall adjudge it expedient to grant it; or
- (b) the court may adjourn the case for trial to as early a diet as is consistent with the just interest of both parties,

in which case the prosecutor shall, if requested by the accused, furnish him with a copy of the complaint if he does not already have one ;

- (c) where the accused is brought before the court by apprehension he shall be entitled to an adjournment of the case for not less than 48 hours, if the request for such adjournment is made before the prosecutor has commenced his proof, and the court shall inform the accused of his right to such adjournment:

Provided that the case may proceed to trial at once or on a shorter adjournment than 48 hours if the court considers that necessary to secure the examination of witnesses who otherwise would not be available;

- (d) where the accused is in custody, he may be committed to prison or to legalised police cells or to any other place to which he may lawfully be committed pending trial either without bail or until he finds sufficient bail to appear at such adjourned diet and at all future diets of the case, and the amount of such bail shall be fixed in the minute of adjournment; or
- (e) the court may in any case where it shall judge it expedient, and whether or not the accused is in custody, instead of fixing bail as aforesaid, appoint the accused to attend at such adjourned diet under a penalty, not exceeding £10, in case he shall fail to appear;
- (f) the court may from time to time, and at any stage of the case, on the motion of either party or ex proprio motu grant such adjournment as may be necessary for the proper conduct of the case, and where from any cause a diet has to be continued from day to day it shall not be necessary to intimate such continuation to the accused;
- (g) it shall not be necessary for the prosecutor to establish a charge or part of a charge to which the accused pleads guilty;
- (h) the court may, in any case where it considers such a course expedient, permit any witness for the defence to be examined prior to evidence for the prosecution having been led or concluded, but in any such case the accused shall be entitled to lead additional evidence after the case for the prosecution is closed.

338 Failure of accused to appear

Where the accused in a summary prosecution fails to appear at any diet of which he has received intimation, or to which he has been cited, the following provisions shall apply:—

- (a) the court may adjourn the trial to another diet, and

order the accused to attend at such diet, and appoint intimation thereof to be made to him, which intimation shall be sufficiently given by an officer of law, or by letter signed by the prosecutor and sent to the accused at his last known address by registered post or by the recorded delivery service, and the production in court of the written execution of such officer or of an acknowledgment or certificate of the delivery of the

letter issued by the Post Office shall be sufficient evidence of such intimation having been duly given ;

- (b) where the accused is charged with any statutory offence for which a sentence of imprisonment cannot be imposed in the first instance, or where the statute founded on or conferring jurisdiction authorises procedure in the absence of the accused, the court may, on the motion of the prosecutor and upon proof that the accused has been duly cited, or has received due intimation of the diet where such intimation has been ordered, proceed to hear and dispose of the case in the absence of the accused. Unless the statute founded on authorises conviction in default of appearance, proof of the complaint must be led to the satisfaction of the court. The court in any case to which this paragraph applies may, if it shall judge it expedient, allow any solicitor who satisfies the court that he has authority from the accused so to do, to appear and plead for and defend him ;
- (c) the court may grant warrant to apprehend the accused ;
- (d) the court may, on the motion of the prosecutor, forfeit any bail deposited or found for the appearance of the accused or, where the accused has been ordered to attend under a penalty, may declare such penalty to be forfeited, and such bail or penalty may, where necessary, be recovered in the manner provided in section 303 of this Act, and in addition to such forfeiture the court may grant warrant to apprehend the accused.

339 Alibi

It shall not be competent for the accused in a summary prosecution to found on a plea of alibi unless he gives, prior to the examination of the first witness for the prosecution, notice to the prosecutor of the plea with particulars as to time and place and of the witnesses by whom it is proposed to prove it. The prosecutor, on such notice being given, shall be entitled, if he so desires, to an adjournment of the case.

340 Examination of witness

In any trial, it shall be competent for the party against whom a witness is produced and sworn in causa to examine such witness, not in cross only, but also in causa.

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

- (1) No person adduced as a witness shall be excluded from giving evidence by reason of having been convicted of or having suffered punishment for crime, or by reason of interest, or by reason of agency or of partial counsel, or by reason of having appeared without citation or without having been duly cited to attend, or by reason of having been precognosced subsequently to the date of citation.
- (2) Every person so adduced, who is not otherwise by law disqualified from giving evidence, shall be admissible as a witness, notwithstanding any objection offered on any of the above-mentioned grounds.
- (3) Nothing in this section shall prevent such witness from being examined on any point tending to affect his credibility.
- (4) Where any person who is or has been an agent of the accused shall be adduced and examined as a witness for the accused, it shall not be competent to the accused to

object, on the ground of confidentiality, to any question proposed to be put to such witness on matter pertinent to the issue of the guilt of the accused.

342 Witnesses admissible notwithstanding relationship to parties

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

343 Presence in court not to disqualify witnesses in certain cases

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

344 Punishment of witness for contempt

- (1) If a witness in a summary prosecution shall wilfully fail to attend after being duly cited, or unlawfully refuse to be sworn, or after the oath has been administered to him refuse to answer any question which the court may allow, or to produce documents in his possession when required by the court, or shall prevaricate in his evidence, he shall be deemed guilty of contempt of court and be liable to be summarily punished forthwith for such contempt by a fine not exceeding £25 or by imprisonment for any period not exceeding 20 days.
- (2) Where such punishment as aforesaid is summarily imposed, the clerk of court shall enter in the record of the proceedings the acts constituting the contempt or the statements forming the prevarication.
- (3) The foregoing provisions of this section shall be without prejudice to the prosecutor proceeding by way of formal complaint for any such contempt where such summary punishment, as above mentioned, is not imposed.
- (4) Any witness who, after being duly cited in accordance with section 315 of this Act—
 - (a) fails without reasonable excuse, after receiving at least 24 hours' notice, to attend for precognition by a prosecutor at the time and place mentioned in the citation served on him, or
 - (b) refuses when so cited to give information within his knowledge regarding any matter relative to the commission of the offence in relation to which such precognition is taken,shall be liable to the like punishment as is provided in the foregoing provisions of this section.

345 Administration of oath to same witness in cases at same diet

Where a witness in a summary prosecution is examined on oath in a case in which the accused is charged with an offence under any statute, and where the same witness is

examined at the same diet in subsequent cause against the same or different persons accused of offences under the same statute, it shall not be necessary for the judge to administer the oath to the witness in the subsequent cases, but it shall be sufficient that the judge shall remind him in each case that he is still on oath.

346 Accused and spouse competent witness for defence

The accused and the spouse of the accused shall be competent witnesses for the defence at every stage of the case, whether the accused is on trial alone or along with a co-accused:

Provided that—

- (a) the accused shall not be called as a witness in pursuance of this section except upon his own application;
- (b) the failure of the accused or the spouse of the accused to give evidence shall not be commented upon by the prosecution;
- (c) the spouse of the accused shall not, save as mentioned in section 348 of this Act, be called as a witness in pursuance of this section except upon the application of the accused;
- (d) nothing in this section or in section 348 of this Act shall compel a spouse to disclose any communication made to him or her by the other spouse during the marriage;
- (e) the accused who gives evidence on his own behalf in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged;
- (f) the accused who gives evidence on his own behalf in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless—
 - (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged ; or
 - (ii) the accused or his counsel or solicitor has asked questions of the witnesses for the prosecution with a view to establish the accused's good character, or the accused has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of of the prosecutor or of the witnesses for the prosecution ; or
 - (iii) the accused has given evidence against any other person charged with the same offence;
- (g) every person called as a witness in pursuance of this section or section 348 of this Act shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

347 Evidence of accused

Where the only witness to the facts of the case called by the defence is the accused, he shall be called as a witness immediately after the close of the evidence for the prosecution.

348 Spouse as witness in certain cases

- (1) The spouse of a person charged with—
- (a) bigamy,
 - (b) any offence mentioned in Schedule 1 to this Act, or
 - (c) any offence under any enactment mentioned in Schedule 4 to this Act,
- may be called as a witness either for the prosecution or for the defence without the consent of the person charged.
- (2) Nothing in this section or in section 141 or section 346 of this Act shall affect a case where the spouse of a person charged with an offence may at common law be called as a witness without the consent of that person.

349 Witness may be examined, etc., as to having previously made a different statement

In any trial, any witness may be examined as to whether he has on any specified occasion made a statement on any matter pertinent to the issue at the trial different from the evidence given by him in such trial; and in such trial evidence may be led to prove that such witness has made such different statement on the occasion specified.

350 Witness may be recalled

In any trial, on the motion of either party, the presiding judge may permit a witness who has been examined to be recalled.

351 Defence to speak last

In any trial, the accused or, where he is legally represented, his counsel or solicitor shall have the right to speak last.

352 Declaration of accused

The declaration of the accused, the formal parts of which may be written or printed, or partly written and partly printed, duly authenticated by a justice as having been emitted before him according to the existing law and practice, shall be received in evidence without being sworn to by witnesses, either for the prosecution or for the accused, but it shall be competent for the accused, before such declaration is read to the court, to adduce as witnesses the persons who were present when the declaration was emitted, and to examine them upon any matters regarding such declaration on which it would be competent to examine them according to the existing law and practice, and to move the court to refuse to allow the declaration to be read on grounds appearing on the face of the declaration itself, or on the ground of what is disclosed in such evidence or on both of those grounds, and where the accused objects to the declaration, the prosecutor shall be entitled to examine any witnesses in regard thereto whom the accused may be entitled to examine as aforesaid.

353 Proof of official documents

- (1) Any letter, minute or other official document issuing from the office or in the custody of any of the departments of state or government in the United Kingdom the production of which in evidence is required in any summary prosecution, and which according

to the rules and regulations applicable to such departments may be competently produced, shall when produced be received as prima facie evidence of the matters contained in it without being produced or sworn to by any witness, and a copy thereof bearing to be certified by any person having authority to certify the same shall be treated as equivalent to the original, and no proof of the signature of the person certifying such copy, or of his authority to certify it, shall be necessary.

- (2) Any order by any of the departments of state or government or any local authority or public body made under powers conferred by any statute, or a print or copy of such order, shall when produced in a summary prosecution be received in evidence of the due making, confirmation, and existence of such order without being sworn to by any witness and without any further or other proof, but without prejudice to any right competent to the accused to challenge any such order as being ultra vires of the authority making it or on any other competent ground, and where any such order is referred to in the complaint it shall not be necessary to enter it in the record of the proceedings as a documentary production.
- (3) The provisions contained in this section shall be deemed to be in addition to, and not in derogation of, any powers of proving documents conferred by statute, or existing at common law.

354 Admissions by parties

- (1) It shall not be necessary in any summary prosecution for either party to lead proof of any fact which is admitted by the opposite party, or to prove any documents the terms and application of which are not in dispute, and copies of any documents may, by agreement of the parties, be accepted as equivalent to the originals:

Provided that this subsection shall not apply unless the accused has legal assistance in his defence.

- (2) Admissions or agreements under the foregoing subsection may be made by lodging with the clerk of court a minute signed by the person or persons making the same or by his or their counsel or solicitor, and any facts and documents so admitted or agreed shall be accepted as if they had been duly proved.

355 Judges equally divided

In a summary prosecution in a court consisting of more than one judge, if the judges are equally divided in opinion as to the guilt of the accused, the accused shall be found not guilty of the charge or part thereof on which such division of opinion exists.

356 Previous convictions

- (1) A previous conviction may not be libelled as an aggravation of an offence.
- (2) Where a person is convicted of an offence, the court may have regard to any previous conviction in respect of that person in deciding on the disposal of the case.
- (3) Nothing in this section shall affect the sentence which a court may pass on a second or subsequent conviction.

357 Laying of previous convictions before court

- (1) Where the accused in a summary prosecution has been previously convicted of any offence and the prosecutor has decided to lay a previous conviction before the court, the following provisions shall have effect:—
 - (a) a notice in the form, as nearly as may be, of Form No. 2 or 3 of Part III of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or of the appropriate form in an Act of Adjournal under this Act setting forth the previous conviction shall be served on the accused with the complaint where he is cited to a diet, and where he is in custody the complaint and such a notice shall be served on him before he is asked to plead;
 - (b) the previous conviction shall not be laid before the judge until he is satisfied that the charge is proved;
 - (c) if a plea of guilty is tendered or if, after a plea of not guilty, the accused is convicted the prosecutor shall lay the notice referred to in paragraph (a) of this subsection before the judge, and the judge or the clerk of court shall ask the accused whether he admits the previous conviction, and if such admission is made it shall be entered in the record of the proceedings;
 - (d) it shall not be necessary for the prosecutor to produce extracts of any previous convictions so admitted;
 - (e) where the accused does not admit any such previous conviction, the prosecutor unless he withdraws the conviction shall adduce evidence in proof thereof either then or at any other diet;
 - (f) a copy of any notice served on the accused under this subsection shall be entered in the record of the proceedings.
- (2) A conviction, or an extract conviction of any offence committed in any part of the United Kingdom, bearing to be under the hand of the officer in use to give out such extract conviction, shall be received in evidence without being sworn to by witnesses. An official of any prison in which the accused may have been confined on such conviction shall be a competent and sufficient witness to prove the application thereof to the accused, although such official may not have been present in court at the trial to which such conviction relates. This provision shall be without prejudice to any other competent mode of proving a conviction and the application thereof to the accused.
- (3) Where in any court a book of record is kept of the convictions in the court containing the like particulars as are inserted in an extract conviction, and where at the end of each day's proceedings the entries in such book are certified as correct by the judge or clerk of court, such entries shall, in any proceeding in that court, be accepted as evidence of such convictions.
- (4) Where the accused in a summary prosecution is convicted of any offence and also of any aggravation by previous conviction, and is again accused of any offence in regard to which such conviction may be competently used as an aggravation, the production of the prior conviction, or an extract thereof, setting forth the particulars of the previous convictions therein libelled, shall be admissible and sufficient evidence to prove against the accused all the previous convictions and aggravations therein set forth.
- (5) Nothing in this section shall prevent evidence of previous convictions being led in *causa* where such evidence is competent in support of a substantive charge.

358 Proof of previous convictions by fingerprints

- (1) A previous conviction may be proved against any person in any criminal proceedings by the production of such evidence of the conviction as is mentioned in this section and by showing that his fingerprints and those of the person convicted are the fingerprints of the same person.
- (2) A certificate purporting to be signed by or on behalf of the Chief Constable of Strathclyde or the Commissioner of Police of the Metropolis, containing particulars relating to a conviction extracted from the criminal records kept by the person by or on whose behalf the certificate is signed, and certifying that the copies of the fingerprints contained in the certificate are copies of the fingerprints appearing from the said records to have been taken in pursuance of regulations for the time being in force under section 11 of the Prisons (Scotland) Act 1952, or under section 16 of the Prison Act 1952, from the person convicted on the occasion of the conviction or on the occasion of his last conviction, shall be sufficient evidence of the conviction or, as the case may be, of his last conviction and of all preceding convictions and that the copies of the fingerprints produced on the certificate are copies of the fingerprints of the person convicted.
- (3) Where a person has been apprehended and detained in the custody of the police in connection with any criminal proceedings, a certificate purporting to be signed by the chief constable concerned or a person authorised on his behalf, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.
- (4) A certificate purporting to be signed by or on behalf of the governor of a prison or of a remand centre in which any person has been detained in connection with any criminal proceedings, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.
- (5) A certificate purporting to be signed by or on behalf of the Chief Constable of Strathclyde, and certifying that the fingerprints, copies of which are certified as aforesaid by or on behalf of the Chief Constable or the Commissioner of Police of the Metropolis to be copies of the fingerprints of a person previously convicted and the fingerprints certified by or on behalf of a chief constable or a governor as aforesaid, or otherwise shown, to be the fingerprints of the person against whom the previous conviction is sought to be proved, are the fingerprints of the same person, shall be sufficient evidence of the matter so certified.
- (6) The method of proving a previous conviction authorised by this section shall be in addition to any other method of proving the conviction.

359 Record

Proceedings in a summary prosecution shall be conducted summarily viva voce and, except where otherwise provided, no record need be kept of the proceedings other than the complaint, the plea, a note of any documentary evidence produced, and the conviction and sentence or other finding of the court:

Provided that any objections taken to the competency or relevancy of the complaint or proceedings, or to the competency or admissibility of evidence, shall, if either party desires it, be entered in the record of the proceedings.

360 Proceedings written or printed

Proceedings in a summary prosecution may be either in writing or printed, or may be partly written and partly printed,
and all forms bearing reference to any antecedent form may be either on the same sheet of paper therewith or on a separate sheet attached to it.

Procedure at trial involving children

361 Child under 14 not to be in court during trial of another person

No child under 14 years of age (other than an infant in arms) shall be permitted to be present in court during the trial of any other person charged with an offence, or during any proceedings preliminary thereto, except during such time as his presence is required as a witness or otherwise for the purposes of justice; and any child present in court when under this section he is not to be permitted to be so shall be ordered to be removed:

Provided that this section shall not apply to messengers, clerks, and other persons required to attend at any court for purposes connected with their employment.

362 Power to clear court while child is giving evidence in certain cases

- (1) Where, in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, a person who, in the opinion of the court, is a child is called as a witness, the court may direct that all or any persons, not being members or officers of the court or parties to the case, their counsel or solicitors, or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of that witness:

Provided that nothing in this section shall authorise the exclusion of bona fide representatives of a newspaper or news agency.

- (2) The powers conferred on a court by this section shall be in addition and without prejudice to any other powers of the court to hear proceedings in camera.

363 Power to proceed with case in absence of person under 17

Where, in any proceedings relating to any of the offences mentioned in Schedule 1 to this Act, the court is satisfied that the attendance before the court of any person under, the age of 17 years in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of that person.

364 Power of court, in respect of certain offences against a child, to refer child to reporter

Any court by or before which a person is convicted of having committed in respect of a child any of the offences mentioned in Schedule 1 to this Act or any offence under section 21 of the Children and Young Persons (Scotland) Act 1937 may refer the child to the reporter of the local authority in whose area the child resides and certify that the said offence shall be a ground established for the purposes of Part III of the Social Work (Scotland) Act 1968.

365 Power to prohibit publication of certain matter

- (1) In relation to any proceedings in any court, the court may direct that—
 - (a) no newspaper report of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any person under the age of 17 years concerned in the proceedings, either as being the person by or against or in respect of whom the proceedings are taken, or as being a witness therein;
 - (b) no picture shall be published in any newspaper as being or including a picture of any person under the age of 17 years so concerned in the proceedings ;
except in so far (if at all) as may be permitted by the direction of the court.
- (2) Any person who publishes any matter in contravention of any such direction shall on summary conviction be liable in respect of each offence to a fine not exceeding £50.
- (3) This section shall, with the necessary modifications, apply in relation to sound and television broadcasts as it applies in relation to newspapers.
- (4) In this section, references to a court shall not include a court in England or Wales.

366 Procedure when sheriff sits summarily in respect of offence by child

- (1) Where summary proceedings are brought in respect of an offence alleged to have been committed by a child, the sheriff shall sit either in a different building or room from that in which he usually sits or on different days from those on which other courts in the building are engaged in criminal proceedings : and no person shall be present at any sitting to which this subsection applies except—
 - (a) members and officers of the court;
 - (b) parties to the case before the court, their solicitors and counsel, and witnesses and other persons directly concerned in that case ;
 - (c) bona fide representatives of newspapers or news agencies;
 - (d) such other persons as the court may specially authorise to be present.
- (2) The power to make rules conferred on the High Court under section 457 of this Act shall include power to make rules as respects the procedure in cases to which the foregoing subsection applies.

367 Powers of sheriff sitting summarily

- (1) A sheriff sitting summarily for the purpose of hearing a charge against, or an application relating to, a person who is believed to be a child may, if he thinks fit to do so, proceed with the hearing and determination of the charge or application, notwithstanding that it is discovered that the person in question is not a child.
- (2) When a sheriff sitting summarily has remanded a child for information to be obtained with respect to him, any sheriff sitting summarily in the same place—
 - (a) may in his absence extend the period for which he is remanded so, however that he appears before a sheriff or a justice at least once in every two days;
 - (b) when the required information has been obtained, may deal with him finally ;
and where the sheriff by whom he was originally remanded has recorded a finding that he is guilty of an offence charged against him, it shall not be necessary for any court which subsequently deals with him under this subsection to hear evidence as to

the commission of that offence, except in so far as it may consider that such evidence will assist the court in determining the manner in which he should be dealt with.

- (3) Any direction in any enactment that a charge shall be brought before a juvenile court shall be construed as a direction that he shall be brought before the sheriff sitting as a court of summary jurisdiction, and no such direction shall be construed as restricting the powers of any justice or justices to entertain an application for bail or for a remand, and to hear such evidence as may be necessary for that purpose.

368 Presumption and determination of age of child

- (1) Where a person charged with an offence is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a child, the court shall make due inquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case, but an order or judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court, and the age presumed or declared by the court to be the age of the person so brought before it shall, for the purposes of this Act or the Children and Young Persons (Scotland) Act 1937, be deemed to be the true age of that person, and, where it appears to the court that the person so brought before it has attained the age of 17 years, that person shall for the purposes of this Act or the Children and Young Persons (Scotland) Act 1937 be deemed not to be a child.
- (2) The court in making any inquiry in pursuance of the foregoing subsection shall have regard to the application of the provisions of section 30(1) of the Social Work (Scotland) Act 1968 but an order or judgment of the court shall not be invalidated by any subsequent proof that the court was not informed that at the material time the person was subject to a supervision requirement or that his case had been referred to a children's hearing under Part V of that Act.
- (3) Where in any complaint in respect of any offence under the Children and Young Persons (Scotland) Act 1937 or any of the offences mentioned in Schedule 1 to this Act, except an offence under the Criminal Law Amendment Act 1885, it is alleged that the person by or in respect of whom the offence was committed was a child or was under or had attained any specified age, and he appears to the court to have been at the date of the commission of the alleged offence a child, or to have been under or to have attained the specified age, as the case may be, he shall for the purposes of this Act or the Children and Young Persons (Scotland) Act 1937 be presumed at that date to have been a child or to have been under or to have attained that age, as the case may be, unless the contrary is proved.
- (4) Where, in any complaint in respect of any offence under the Children and Young Persons (Scotland) Act 1937 or any of the offences mentioned in Schedule 1 to this Act, it is alleged that the person in respect of whom the offence was committed was a child or was a young person, it shall not be a defence to prove that the person alleged to have been a child was a young person or the person alleged to have been a young person was a child in any case where the acts constituting the alleged offence would equally have been an offence if committed in respect of a young person or child respectively.
- (5) Where a person is charged with an offence under the Children and Young Persons (Scotland) Act 1937 in respect of a person apparently under a specified age, it shall be a defence to prove that the person was actually of or over that age.

- (6) In subsection (3) of this section, references to a child (other than a child charged with an offence) shall be construed as references to a child under the age of 17 years; but except as aforesaid references in this section to a child shall be construed as references to a child within the meaning of section 462 of this Act.

369 Age of criminal responsibility

It shall be conclusively presumed that no child under the age of eight years can be guilty of any offence.

370 Child charged jointly with person who is not a child

When a child has been charged with an offence jointly with a person who is not a child the provisions of sections 366, 367 and 374 of this Act shall not apply to summary proceedings before the sheriff in respect of the charges.

371 Welfare of child

Every court in dealing with a child who is brought before it as an offender shall have regard to the welfare of the child and shall in a proper case take steps for removing him from undesirable surroundings.

372 Reference and remit of children's cases by courts to children's hearings

- (1) Where a child who is not subject to a supervision requirement is charged with an offence and pleads guilty to, or is found guilty of, that offence the court—
- (a) instead of making an order on that plea or finding, may remit the case to the reporter of the local authority to arrange for the disposal of the case by a children's hearing; or
 - (b) on that plea or finding may request the reporter of the local authority to arrange a children's hearing for the purposes of obtaining their advice as to the treatment of the child.
- (2) Where a court has acted in pursuance of paragraph (b) of the foregoing subsection, the court, after consideration of the advice received from the children's hearing may, as it thinks proper, itself dispose of the case or remit the case as aforesaid.
- (3) Where a child who is subject to a supervision requirement is charged with an offence and pleads guilty to, or is found guilty of, that offence the court shall request the reporter of the local authority to arrange a children's hearing for the purpose of obtaining their advice as to the treatment of the child, and on consideration of that advice may, as it thinks proper, itself dispose of the case or remit the case as aforesaid.
- (4) Where a court has remitted a case to the reporter under this or the next following section, the jurisdiction of the court in respect of the child or person shall cease, and his case shall stand referred to a children's hearing.
- (5) Nothing in the provisions of this or the next following section shall apply to a case in respect of an offence the sentence for which is fixed by law.

373 Reference and remit of cases of certain young persons by courts to children's hearings

Where a person who is not subject to a supervision requirement but is a person over the age of 16, and is not within six months of attaining the age of 18, is charged summarily with an offence and pleads guilty to, or has been found guilty of, that offence the court on that plea or finding may request the reporter of the local authority to arrange a children's hearing for the purpose of obtaining their advice as to the treatment of the person, and on consideration of that advice, the court may, as it thinks proper, itself dispose of the case or, where the hearing have so advised, remit the case to the reporter of the local authority for the disposal of the case by a children's hearing.

374 Restrictions on report of proceedings involving child

- (1) Subject as hereinafter provided, no newspaper report of any summary proceedings in the sheriff court in respect of an offence by a child shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of a person under the age of 17 years concerned in those proceedings, either as being the person against or in respect of whom the proceedings are taken or as being a witness therein, nor shall any picture be published in any newspaper as being or including a picture of a person under the age of 17 years so concerned in any such proceedings as aforesaid:

Provided that the court or the Secretary of State may in any case, if satisfied that it is in the interests of justice so to do, by order dispense with the requirements of this section to such extent as may be specified in the order.

- (2) This section shall, with the necessary modifications, apply in relation to sound and television broadcasts as it applies in relation to newspapers.
- (3) This section shall, with the necessary modifications, apply in relation to any proceedings on appeal from a sheriff sitting summarily in respect of an offence by a child (including an appeal by stated case) as it applies in relation to the proceedings before the sheriff.
- (4) Any person who publishes any matter in contravention of this section shall on summary conviction be liable in respect of each offence to a fine not exceeding £50.

Procedure at Trial of Persons suffering from Mental Disorder

375 Insanity in bar of trial

- (1) Subject to the following provisions of this section, any rule of law relating to insanity standing in bar of trial shall apply in the case of a person charged summarily in the sheriff court as it would apply if that person were charged on indictment.
- (2) Where, in the case of any person charged summarily in the sheriff court, the court is satisfied that the person is insane so that the trial of that person cannot proceed, the court shall direct a finding to that effect, and the reasons for that finding, to be recorded, and shall deal with him in the manner provided by section 376(2) of this Act.
- (3) It shall not be competent for a person charged as aforesaid to found on a plea of insanity standing in bar of trial unless, before the first witness for the prosecution is called, he gives notice to the prosecutor of the plea and of the witnesses by whom he proposes

to maintain it; and where notice as aforesaid has been given, the court shall, if the prosecutor so moves, adjourn the case.

- (4) Where it appears to a court that it is not practicable or appropriate for the accused to be brought before it for the purpose of determining whether he is insane so that his trial cannot proceed, then, if no objection to such a course is taken by or on behalf of the accused, the court may order that the case be proceeded with in his absence.

376 Power of court to order hospital admission or guardianship

- (1) Where a person is convicted in the sheriff court of an offence, other than an offence the sentence for which is fixed by law, punishable by that court with imprisonment, and the following conditions are satisfied, that is to say—

- (a) the court is satisfied, on the written or oral evidence of two medical practitioners (complying with the provisions of section 377 of this Act) that the offender is suffering from mental disorder of a nature or degree which, in the case of a person under 21 years of age, would warrant his admission to a hospital or his reception into guardianship under Part IV of the Mental Health (Scotland) Act 1960 ; and
- (b) the court is of opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section,

the court may by order authorise his admission to and detention in such hospital as may be specified in the order or, as the case may be, place him under the guardianship of such local authority or of such other person approved by a local authority as may be so specified.

- (2) Where a person is charged summarily in the sheriff court with an act or omission as an offence and a finding has been recorded in respect of that person under section 375(2) of this Act, the court shall make such an order for his admission to and detention in a hospital as may be made under the foregoing subsection.
- (3) Where in the case of a person charged as aforesaid the court would have power, on convicting him, to make an order under subsection (1) of this section, then, if it is satisfied that the person did the act or made the omission charged, the court may, if it thinks fit, make such an order without convicting him.
- (4) Where a person is charged before a court of summary jurisdiction, other than a sheriff court, with any act or omission constituting an offence punishable with imprisonment, the court, if it appears to it that that person may be suffering from mental disorder, shall remit him to the sheriff court in the manner provided by section 286 of this Act, and the sheriff court shall, on any such remit being made, have the like power to make an order under subsection (1) of this section in respect of him as if he had been charged before that court with the said act or omission as an offence, or in dealing with him may exercise the like powers as the court making the remit.
- (5) Where it appears to the prosecutor in any court before which a person is charged with an offence that the person may be suffering from mental disorder, it shall be the duty of such prosecutor to bring before the court such evidence as may be available of the mental condition of that person.
- (6) An order for the admission of a person to a hospital (in this Act referred to as " a hospital order ") shall not be made under this section in respect of an offender or of a

person to whom subsection (3) of this section applies unless the court is satisfied that that hospital, in the event of such an order being made by the court, is available for his admission thereto within 28 days of the making of such an order.

- (7) A State hospital shall not be specified in a hospital order in respect of the detention of a person unless the court is satisfied, on the evidence of the medical practitioners which is taken into account under paragraph (a) of subsection (1) of this section, that the offender, on account of his dangerous, violent or criminal propensities, requires treatment under conditions of special security, and cannot suitably be cared for in a hospital other than a State hospital.
- (8) An order placing a person under the guardianship of a local authority or of any other person (in this Act referred to as " a guardianship order ") shall not be made under this section unless the court is satisfied that that authority or person is willing to receive that person into guardianship.
- (9) A hospital order or guardianship order shall specify the form of mental disorder, being mental illness or mental deficiency or both, from which, upon the evidence taken into account under paragraph (a) of subsection (1) of this section, the offender is found by the court to be suffering; and no such order shall be made unless the offender is described by each of the practitioners, whose evidence is taken into account as aforesaid, as suffering from the same form of mental disorder, whether or not he is also described by either of them as suffering from the other form.
- (10) Where an order is made under this section, the court shall not pass sentence of imprisonment or impose a fine or make a probation order in respect of the offence, but may make any other order which the court has power to make apart from this section; and for the purposes of this subsection " sentence of imprisonment" includes any sentence or order for detention.

377 Requirements as to medical evidence

- (1) Of the medical practitioners whose evidence is taken into account under section 376(1) (a) of this Act, at least one shall be a practitioner approved for the purposes of section 27 of the Mental Health (Scotland) Act 1960 by a Health Board as having special experience in the diagnosis or treatment of mental disorder.
- (2) For the purposes of the said section 376(1)(a) a report in writing purporting to be signed by a medical practitioner may, subject to the provisions of this section, be received in evidence without proof of the signature or qualifications of the practitioner ; but the court may, in any case, require that the practitioner by whom such a report was signed be called to give oral evidence.
- (3) Where any such report as aforesaid is tendered in evidence, otherwise than by or on behalf of the accused, then—
 - (a) if the accused is represented by counsel or solicitor, a copy of the report shall be given to his counsel or solicitor;
 - (b) if the accused is not so represented, the substance of the report shall be disclosed to the accused or, where he is a child under 16 years of age, to his parent or guardian if present in court;
 - (c) in any case, the accused may require that the practitioner by whom the report was signed be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by or on behalf of the accused;

and where the court is of opinion that further time is necessary in the interests of the accused for consideration of that report, or the substance of any such report, it shall adjourn the case.

- (4) For the purpose of calling evidence to rebut the evidence contained in any such report as aforesaid, arrangements may be made by or on behalf of an accused person detained in a hospital for his examination by any medical practitioner, and any such examination may be made in private.

378 Supplementary provisions as to hospital orders

The court by which a hospital order is made may give such directions as it thinks fit for the conveyance of the patient to a place of safety and his detention therein pending his admission to the hospital within the period of 28 days referred to in section 376(6) of this Act; but a direction for the conveyance of a patient to a residential establishment provided by a local authority under Part IV of the Social Work (Scotland) Act 1968 shall not be given unless the court is satisfied that that authority is willing to receive the patient therein.

379 Power of court to restrict discharge from hospital

- (1) Where a hospital order is made in respect of a person, and it appears to the court, having regard to the nature of the offence with which he is charged, the antecedents of the person and the risk that as a result of his mental disorder he would commit offences if set at large, that it is necessary for the protection of the public so to do, the court may, subject to the provisions of this section, further order that the person shall be subject to the special restrictions set out in section 60(3) of the Mental Health (Scotland) Act 1960, either without limit of time or during such period as may be specified in the order.
- (2) An order under this section (in this Act referred to as " an order restricting discharge ") shall not be made in the case of any person unless the medical practitioner approved by the Health Board for the purposes of section 27 of the Mental Health (Scotland) Act 1960, whose evidence is taken into account by the court under section 376(1)(a) of this Act, has given evidence orally before the court.
- (3) Where an order restricting the discharge of a patient is in force, a guardianship order shall not be made in respect of him; and where the hospital order relating to him ceases to have effect by virtue of section 58(4) of the Mental Health (Scotland) Act 1960 on the making of another hospital order, that order shall have the same effect in relation to the order restricting discharge as the previous hospital order, but without prejudice to the power of the court making that other hospital order to make another order restricting discharge to have effect on the expiration of the previous such order.
- 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.

387 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 that 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 consignment with the clerk of the court or by entering into an undertaking to pay the amount, but not otherwise, and such security may be forfeited and recovered in like manner as caution.

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

394 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 sessions area in which payment is to be enforceable and, where the court to be specified in a transfer of fine order is a court of summary jurisdiction, it shall, in any case where the order is made by the sheriff court, be a sheriff court.
- (3) Where a transfer of fine order is made with respect to any fine under this section, any functions under any enactment relating to that sum which, if no such order had been made, would have been exercisable by the court which made the order or by the clerk of that court shall cease to be so exercisable.
- (4) Where a transfer of fine order within the meaning of this section or of section 72A of the Magistrates' Courts Act 1952 specifies a court of summary jurisdiction in Scotland, that court and the clerk of that court shall have all the like functions under this Part of this Act in respect of the fine or the sum in respect of which that order was made (including the power to make any further order under this section) as if the fine or the sum were a fine imposed by that court and as if any order made under this section or the said Act of 1952 in respect of the fine or the sum before the making of the transfer of fine order had been made by that court:

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

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

404 Action of clerk of court on transfer of fine orders

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

405 Imprisonment in default of payment of fine

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

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

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

407 Period of imprisonment for non-payment of fine

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

<i>Amount of sum imposed</i>	<i>Period of imprisonment</i>
Not exceeding £2.....	7 days

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

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

- (2) If in any sentence or extract sentence the period of imprisonment inserted in default of payment of a fine or on failure to find caution is in excess of that competent under this Part of this Act, such period of imprisonment shall be reduced to the maximum period under this Part of this Act applicable to such default or failure, and the judge who pronounced the sentence shall have power to order the sentence or extract to be corrected accordingly.
- (3) The periods of imprisonment set forth in subsection (1) of this section shall apply to the non-payment of any sum imposed as aforesaid by a court of summary jurisdiction under a statute or order passed or made before the first day of June 1909, notwithstanding that that statute or order fixes any other period of imprisonment.
- (4) The provisions of this section shall be without prejudice to the operation of section 409 of this Act.

408 Discharge from imprisonment to be specified

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

409 Payment of fine in part by prisoner

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

410 Remission of fine where young offender detained

Where, in the case of an offender detained in a Borstal institution, detention centre or any place under an order made by virtue of section 206 or 413 of this Act, or under supervision following release therefrom, who has not made payment of a fine imposed before his being so detained, it appears to the Secretary of State that remission of the

fine might assist the rehabilitation of the offender, he may, after consultation where practicable with the judge by whom or the presiding chairman of the court by which sentence was passed, remit that fine in whole or in part.

411 Recovery by civil diligence

- (1) Where any fine falls to be recovered by civil diligence in pursuance of this Part of this Act or in any case in which a court of summary jurisdiction may think it expedient to order a fine to be recovered by civil diligence, there shall be added to the finding of the court imposing the fine the words

“and decerns and ordains instant execution by arrestment and also execution to pass hereon by poiding 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).

423 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.

429 " 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, advocacion, 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 consignment or caution is ordered, within five days from the date when consignment 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, advocacy 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—
 - (a) 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

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

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.