



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PART III

GENERAL

458 Construction of enactments referring to sentence of detention

In any enactment, any reference to a sentence of imprisonment as including a reference to a sentence of any other form of detention shall be construed as including a reference to a sentence of detention in a young offenders institution.

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460 Transitional provisions and savings

(1) Without prejudice to the provisions of section 38 of the Interpretation Act 1889 (effect of repeals)—

- (a) nothing in any repeal made by this Act shall affect any order or rule made, certificate issued, requirement or condition imposed or thing done under any enactment repealed by this Act, and every such order, rule, certificate, requirement, condition or thing shall, if in force at the commencement of this Act, continue in force (subject to the provisions of this Act) and be deemed to have been made, issued, imposed or done under the corresponding provisions of this Act; and
- (b) any reference in any document (including an enactment) to any enactment repealed by this Act, whether a specific reference or a reference to provisions of a description which includes, or apart from any repeal made by this Act includes, the enactment so repealed, shall be construed as a reference to the corresponding enactment in this Act.

- (2) Until 16th May 1975, any reference in this Act to a sheriff court district shall be construed as a reference to the county, city or place in which the sheriff court concerned has jurisdiction.
- (3) Any reference in this Act to a form contained in an Act of Adjournal under this Act shall, until that Act of Adjournal comes into force, be construed as a reference to the appropriate form in use immediately before the coming into force of that Act of Adjournal.
- (4) Nothing in this Act shall make it unlawful to detain an accused person in custody pending trial otherwise than in prison if such detention would have been lawful prior to the commencement of this Act.
- (5) Nothing in this Act contained shall apply to the crimes of treason or rebellion against the Sovereign, or shall affect the procedure in any prosecution or trial for treason, or for rebellion against the Sovereign, but all procedure in the prosecution and trial of such crimes shall be conducted according to the existing law and practice.
- (6) Where any provision in an Act of Adjournal has been repealed by this Act, the corresponding provision in this Act shall be subject to be varied or repealed by an Act of Adjournal under this Act.
- (7) Any reference in any enactment or document to an enactment repealed by this Act shall, except where the context otherwise requires, be construed as, or as including, a reference to the corresponding provision in this Act.
- (8) The enactment in this Act of the provisions set out in Schedule 8 to this Act (being re-enactments of provisions contained in Acts of Adjournal made in exercise of powers conferred by Acts of Parliament) shall be without prejudice to the validity of those re-enacted provisions, and any question as to their validity shall be determined as if the re-enacted provisions were contained in Acts of Adjournal made in exercise of those powers.

461 Consequential amendments, repeals and revocations

- (1) The enactments specified in Schedule 9 to this Act shall have effect subject to the amendments set out in that Schedule, being amendments consequential on the preceding provisions of this Act, but the amendment of any enactment by that Schedule shall not be taken as prejudicing the operation of section 38 of the Interpretation Act 1889 (which relates to the effect of repeals).
- (2) The enactments specified in Part I of Schedule 10 to this Act (which include enactments which were obsolete, spent, unnecessary or superseded before the passing of this Act) are hereby repealed to the extent specified in the third column of that Part of that Schedule, and the Acts of Adjournal specified in Part II of that Schedule (which include enactments which were obsolete, spent, unnecessary or superseded before the passing of this Act) are hereby revoked to the extent specified in the third column of that Part of that Schedule.

462 Interpretation

- (1) In this Act, except where the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them—

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" appropriate court" means a court named as such in pursuance of section 183(2) or 384(2) of this Act or of Schedule 5 to this Act in a probation order or in an amendment of any such order made on a change of residence of a probationer ;

" bail" includes any pledge lodged by or on behalf of an accused person as security for his appearance at any diet of court;

" Borstal training " and " detention centre " have the like meanings as in the Prisons (Scotland) Act 1952 ;

" charged " means, in respect of proceedings under Part I of this Act, charged on petition or indictment and, in respect of proceedings under Part II of this Act, charged on complaint;

"child", except in sections 18, 62, 171(3), 294, 313 and 368(3) of this Act and Schedule 1 to this Act, has the meaning assigned to that expression by section 30 of the Social Work (Scotland) Act 1968 ;

" children's hearing" has the meaning assigned to it by section 34(1) of the Social Work (Scotland) Act 1968 ;

" Clerk of Justiciary" shall include assistant clerk of justiciary and shall extend and apply to any person duly authorised to execute the duties of Clerk of Justiciary or assistant clerk of justiciary ;

" commit for trial" means commit until liberation in due course of law;

" complaint" includes a copy of the complaint laid before the court;

" convicted " (except in relation to previous convictions), in respect of proceedings under Part I of this Act, means convicted on indictment, and, in respect of proceedings under Part II of this Act, means summarily convicted ; and " conviction " shall be construed accordingly;

" the court", in relation to solemn procedure, means a court of solemn criminal jurisdiction and includes the High Court and the sheriff court and, in relation to summary procedure, means a court of summary criminal jurisdiction ;

" court of summary jurisdiction " means a court of summary criminal jurisdiction;

" court of summary criminal jurisdiction" shall include the sheriff court and district court;

"crime" means all crime at common law, as well as all crime under any existing or future Acts of Parliament, and includes high crime and offence, felony, crime and offence, offence and misdemeanour, and includes attempt;

"enactment" includes an enactment contained in a local Act and any order, regulation or other instrument having effect by virtue of an Act;

" England " includes Wales ;

" existing" means existing immediately before the commencement of this Act;

" extract conviction " and " extract of previous conviction " include certified copy conviction, certificate of conviction, and any other document under the hand of the proper officer in use to be issued from any court of justice of the United Kingdom as evidence of a conviction;

" fine " includes an instalment of a fine;

" guardian", in relation to a child, includes any person who, in the opinion of the court having cognizance of any case in relation to the child or in which

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the child is concerned, has for the time being the charge of or control over the child ;

"guardianship order" has the meaning assigned to it by section 175(5) or 376(8) of this Act;

"High Court" and "Court of Justiciary" shall mean "High Court of Justiciary" and shall include any court held by the Lords Commissioners of Justiciary, or any of them;

"indictment" shall include any indictment whether in the sheriff court or the High Court framed in the form set out in Schedule A to the Criminal Procedure (Scotland) Act 188,7 or in an Act of Adjournal under this Act or as nearly as may be in such form;

"hospital" means—

- (a) any hospital vested in the Secretary of State under the National Health Service (Scotland) Act 1947;
- (b) any private hospital registered under Part III of the Mental Health (Scotland) Act 1960; and
- (c) any State hospital;

"hospital order " has the meaning assigned to it by section 175(3) or 376(6) of this Act;

"impose detention " or "impose imprisonment" means pass a sentence of detention or imprisonment, as the case may be, or make an order for committal in default of payment of any sum of money or for failing to do or abstain from doing anything required to be done or left undone;

"judge ", in relation to solemn procedure, means a judge of a court of solemn criminal jurisdiction and, in relation to summary procedure, means any sheriff or any judge of a district court;

"justice " includes the sheriff and any stipendiary magistrate or justice of the peace;

"justice of the peace" means any of Her Majesty's justices of the peace for any commission area in Scotland acting within such commission area ;

"legalised police cells" has the like meaning as in the Prisons (Scotland) Act 1952 ;

"local authority " has the meaning assigned to it by section 1(2) of the Social Work (Scotland) Act 1968 ;

"Lord Commissioner of Justiciary" shall include Lord Justice General and Lord Justice Clerk;

"medical practitioner" means a registered medical practitioner within the meaning of the Medical Act 1956;

"offence" means any act, attempt or omission punishable by law;

"officer of law " includes a constable within the meaning of the Police (Scotland) Act 1967, a sheriff officer, prison officer and any other person having authority to execute a warrant of court;

"officer of police" includes a chief constable, deputy chief constable, constable and criminal officer ;

"order " means any order, byelaw, rule or regulation having statutory authority;

"order restricting discharge " has the meaning assigned to it by section 178 or 379 of this Act;

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"patient" means a person suffering or appearing to be suffering from mental disorder;

"place of safety", in relation to a person not being a child, means any police station, prison or remand centre, or any hospital the board of management of which are willing temporarily to receive him, and in relation to a child means a place of safety within the meaning of section 94(1) of the Social Work (Scotland) Act 1968 ;

"prison" does not include a naval, military or air force prison;

"probationer" means a person for the time being under supervision by virtue of a probation order;

"probation order" has the meaning assigned to it by section 183 or 384 of this Act;

"probation period" means the period for which a probationer is placed under supervision by a probation order;

"procurator fiscal" shall mean sheriff's procurator fiscal, and shall include assistant procurator fiscal and procurator fiscal depute and shall extend and apply to any person duly authorised to execute the duties of such procurator fiscal;

"prosecutor", in Part I of this Act, includes Crown counsel, procurator fiscal, any other person prosecuting in the public interest and any private prosecutor; and, in Part II of this Act, includes procurator fiscal, district prosecutor, depute district prosecutor, assistant district prosecutor, and any other person prosecuting in the public interest, private prosecutor, and complainer and any person duly authorised to represent or act for any public prosecutor;

"remand" means an order adjourning the proceedings or continuing the case and giving direction as to detention in custody or liberation during the period of adjournment or continuation and references to remanding a person or remanding in custody or on bail shall be construed accordingly ;

"remand centre" has the like meaning as in the Prisons (Scotland) Act 1952;

"reporter" means an officer appointed by a local authority under section 36 of the Social Work (Scotland) Act 1968 ;

"residential establishment" has the same meaning as in the Social Work (Scotland) Act 1968 ;

"responsible medical officer" has the meaning assigned to it by section 53 of the Mental Health (Scotland) Act 1960;

"sentence" includes an order for imprisonment pronounced by any court whether civil or criminal and an order for detention in a detention centre;

"sheriff" shall include sheriff principal;

"sheriff clerk" shall include sheriff clerk depute, and shall extend and apply to any person duly authorised to execute the duties of sheriff clerk ;

"sheriff court district" shall extend to the limits within which the sheriff has jurisdiction in criminal matters whether by statute or at common law;

"State hospital" has the meaning assigned to it in Part VII of the Mental Health (Scotland) Act 1960;

"statute" shall mean any Act of Parliament, public general, local, or private, and any Provisional Order confirmed by Act of Parliament;

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" supervision requirement" has the meaning assigned to it by section 44(1) of the Social Work (Scotland) Act 1968;

" training school order " has the same meaning as in the Social Work (Scotland) Act 1968 ;

" witness " includes haver.

- (2) References in this Act to a court do not include references to a court-martial; and nothing in this Act shall be construed as affecting the punishment which may be awarded by a court-martial under the Naval Discipline Act 1957, the Army Act 1955 or the Air Force Act 1955 for a civil offence within the meaning of those Acts.
- (3) For the purpose of any provision of Part II of this Act referring to a court acting for any place, a court entitled to exercise jurisdiction in any place shall be deemed to be a court acting for that place.
- (4) For the purposes of this Act, except section 183(7) or 384(7) thereof, where a probation order has been made on appeal, the order shall be deemed to have been made by the court from which the appeal was brought.
- (5) Any reference in this Act to a previous sentence of imprisonment shall be construed as including a reference to a previous sentence of penal servitude; any such reference to a previous sentence of Borstal training shall be construed as including a reference to a previous sentence of detention in a Borstal institution.
- (6) Any reference in this Act to a previous conviction or sentence shall be construed as a reference to a previous conviction by a court in any part of Great Britain and to a previous sentence passed by any such court.
- (7) References in this Act to an offence punishable with imprisonment shall be construed, in relation to any offender, without regard to any prohibition or restriction imposed by or under any enactment, including this Act, upon the imprisonment of offenders of his age.
- (8) Without prejudice to the provisions of section 171 or 368 of this Act, where the age of any person at any time is material for the purposes of any provision of this Act regulating the powers of a court, his age at the material time shall be deemed to be or to have been that which appears to the court, after considering any available evidence, to be or to have been his age at that time.
- (9) References in this Act to findings of guilty and findings that an offence has been committed shall be construed as including references to pleas of guilty and admissions that an offence has been committed.
- (10) For the purposes of sections 62 and 313 of this Act—
 - (a) any person who is the parent or legal guardian of a child or who is legally liable to maintain him shall be presumed to have the custody of him, and as between father and mother the father shall not be deemed to have ceased to have the custody of him by reason only that he has deserted, or otherwise does not reside with, the mother and the child;
 - (b) any person to whose charge a child is committed by any person who has the custody of him shall be presumed to have charge of the child;
 - (c) any other person having actual possession or control of a child shall be presumed to have the care of him.

- (11) References in this Act to any enactment shall, unless the context otherwise requires, be construed as references to that enactment as amended, extended or applied by or under any other enactment, including this Act.

463 Extent

- (1) The following provisions of this Act shall extend to England and Wales, that is to say—
- (a) in Part I, sections 17, 169, 188(3) to (8) and 189 ;
 - (b) in Part II, sections 325, 326(2), 365, 370 (so far as relating to section 374), 374, 389(3) to (8) and 390;
 - (c) in Part III, section 463(1);
 - (d) in Schedule 9, the amendments relating to—
 - (i) the Magistrates' Courts Act 1952;
 - (ii) the Criminal Justice Act 1961 ;
 - (iii) section 26(2) of the Criminal Justice (Scotland) Act 1963 ;
 - (iv) the Criminal Justice Act 1967 ;
 - (v) the Children and Young Persons Act 1969 ;
 - (vi) the Immigration Act 1971 ;
 - (vii) the Criminal Justice Act 1972 ; and
 - (viii) the Powers of Criminal Courts Act 1973.
 - (e) in Schedule 10, the repeals relating to—
 - (i) sections 46, 50 and 54 of the Children and Young Persons (Scotland) Act 1937 ;
 - (ii) sections 7 and 7A of the Criminal Justice (Scotland) Act 1949;
 - (iii) sections 39, 40 and 53(1) of the Criminal Justice (Scotland) Act 1963 ;
 - (iv) section 54(8) of the Criminal Justice Act 1967 ;
 - (v) Schedule 5 (other than paragraph 68 thereof) to the Children and Young Persons Act 1969; and
 - (vi) sections 53 and 58(c) of, and paragraphs 3 and 19 of Schedule 5 to, the Powers of Criminal Courts Act 1973.
- (2) The following provisions of this Act shall extend to the Isle of Man, that is to say—
- (a) in Part I, section 16 ;
 - (b) in Part II, section 324 ;
 - (c) in Part III, section 463(2);
 - (d) in Schedule 10, the repeal relating to section 53(3) of the Criminal Justice (Scotland) Act 1963.
- (3) Save as aforesaid, and except so far as it relates to the interpretation or commencement of the said provisions, this Act shall extend to Scotland only.

464 Short title and commencement

- (1) This Act may be cited as the Criminal Procedure (Scotland) Act 1975.
- (2) Subject to the following provisions of this section, this Act shall come into operation on 16th May 1975.

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- (3) Sections 23 and 329 of this Act shall come into operation on such day as Her Majesty may by Order in Council appoint.
- (4) Sections 214 and 423 of this Act shall come into operation on such date as the Secretary of State may by order appoint; and any such order shall be made by statutory instrument.
- (5) A statutory instrument containing an order under subsection (4) of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.