



# Prisoners and Criminal Proceedings (Scotland) Act 1993

## 1993 CHAPTER 9

### PART II

#### CRIMINAL PROCEEDINGS

##### *Evidence*

#### **28 Prints, samples etc. in criminal investigations**

- (1) This section applies where a person has been arrested and is in custody, or is detained under section 2(1) of the Criminal Justice (Scotland) Act 1980 (detention and questioning).
- (2) A constable may take from the person fingerprints, palmprints and such other prints and impressions of an external part of the body as the constable may, having regard to the circumstances of the suspected offence in respect of which the person has been arrested or detained, reasonably consider it appropriate to take.
- (3) All record of any prints or impressions taken under subsection (2) above shall be destroyed immediately following a decision not to institute criminal proceedings against the person or on the conclusion of such proceedings otherwise than with a conviction or an order under section 383 (absolute discharge) or 384(1) (probation) of the 1975 Act.
- (4) A constable may, with the authority of an officer of a rank no lower than inspector, take from the person—
  - (a) from the hair of an external part of the body, by means of cutting or combing, a sample of hair or other material;
  - (b) from a fingernail or toenail or from under any such nail, a sample of nail or other material;
  - (c) from an external part of the body, by means of swabbing or rubbing, a sample of blood or other body fluid, of body tissue or of other material.

(5) A constable may use reasonable force in exercising any power conferred by subsection (2) or (4) above.

(6) Nothing in this section shall prejudice—

- (a) any power of search;
- (b) any power to take possession of evidence where there is imminent danger of its being lost or destroyed; or
- (c) any power to take prints, impressions or samples under the authority of a warrant.

## **29 Evidence from documents**

Schedule 3 to this Act, which makes provision regarding the admissibility in criminal proceedings of copy documents and of evidence contained in business documents, shall have effect.

## **30 Admissibility of audio and video records**

(1) Section 32 of the 1980 Act (evidence by letter of request or on commission) shall be amended as follows.

(2) After subsection (3) there shall be inserted the following subsection—

“(3A) Where any such record as is mentioned in paragraph (b) of subsection (2) above, or any part of such record, is not a document in writing, that record or part shall not be received in evidence under subsection (3) above unless it is accompanied by a transcript of its contents.”.

(3) After subsection (5) there shall be inserted the following subsection—

“(5A) In subsections (2) and (3) above, “record” includes, in addition to a document in writing—

- (a) any disc, tape, soundtrack or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
- (b) any film (including microfilm), negative, tape, disc or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom.”.

## **31 Transcript of customs interview sufficient evidence**

In section 60(1) of the Criminal Justice (Scotland) Act 1987 (which provides that certain transcripts of interviews between police officers and accused persons shall be received in evidence and be sufficient evidence of the making of the transcript and of its accuracy), after the words “accused person” there shall be inserted the words “, or between a person commissioned, appointed or authorised under section 6(3) of the Customs and Excise Management Act 1979 and an accused person,”.

## **32 Evidence from abroad through television links in solemn proceedings**

After section 32 of the 1980 Act there shall be inserted the following section—

### **“32A Evidence from abroad through television links in solemn proceedings**

- (1) In any solemn proceedings in the High Court or the sheriff court a person other than the accused may give evidence through a live television link if—
  - (a) the witness is outside the United Kingdom;
  - (b) an application under subsection (2) below for the issue of a letter of request has been granted; and
  - (c) the court is satisfied as to the arrangements for the giving of evidence in that manner by that witness.
- (2) The prosecutor or the defence in any proceedings referred to in subsection (1) above may apply to a judge of the court in which the trial is to take place (or, if that court is not yet known, to a judge of the High Court) for the issue of a letter of request to—
  - (a) a court or tribunal exercising jurisdiction in a country or territory outside the United Kingdom where a witness is ordinarily resident; or
  - (b) any authority which the judge is satisfied is recognised by the government of that country or territory as the appropriate authority for receiving requests for assistance in facilitating the giving of evidence through a live television link,
 requesting assistance in facilitating the giving of evidence by that witness through a live television link.
- (3) An application under subsection (2) above shall be granted only if the judge is satisfied that—
  - (a) the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial; and
  - (b) the granting of the application—
    - (i) is in the interests of justice; and
    - (ii) in the case of an application by the prosecutor, is not unfair to the accused.
- (4) The power of the High Court to make Acts of Adjournal under the 1975 Act shall include power to make such provision as it considers necessary or expedient for the purposes of this section.”.

## **33 Evidence of children on commission**

- (1) Without prejudice to section 32 of the 1980 Act (evidence by letter of request or on commission where witness is outwith United Kingdom or is ill or infirm) and subject to section 35 of this Act, where a child has been cited to give evidence in a trial the court may appoint a commissioner to take the evidence of the child if—
  - (a) in solemn proceedings, at any time before the oath is administered to the jury;
  - (b) in summary proceedings, at any time before the first witness is sworn; or
  - (c) in exceptional circumstances in either solemn or summary proceedings, during the course of the trial,
 application is made to the court in that regard; but to be so appointed a person must be, and for a period of at least five years have been, a member of the Faculty of Advocates or a solicitor.

- (2) Proceedings before a commissioner appointed under subsection (1) above shall be recorded by video recorder.
- (3) An accused shall not, except by leave of the commissioner, be present in the room where such proceedings are taking place but shall be entitled by such means as seem suitable to the commissioner to watch and hear the proceedings.

#### **34 Concealment by screen of accused from child giving evidence**

Subject to section 35 of this Act, where a child has been cited to give evidence in a trial, the court may, on application being made to it, authorise the use of a screen to conceal the accused from the sight of the child while the child is present to give evidence; but arrangements shall be made to ensure that the accused is able to watch and hear as the evidence is given by the child.

#### **35 Circumstances in which application under section 33 or 34 may be granted or on transfer be deemed granted, etc**

Subsections (2) and (3) of section 56 (restrictions on power of court to grant application for child's evidence to be given by means of live television link) and sections 57 (transfer of case where accommodation or equipment is lacking) and 58 (identification of accused by child whose evidence is given by such link) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 shall apply in respect of an application under section 33(1) or 34 of this Act as those provisions of that Act apply in respect of an application under subsection (1) of the said section 56; and in sections 33 and 34 of this Act "child", "court" and "trial" have the same meanings as in the said sections 56 to 58.

#### **36 Evidence as to taking or destruction of eggs**

After section 19 of the Wildlife and Countryside Act 1981 there shall be inserted the following section—

##### **“19A Evidence in Scotland as to taking or destruction of eggs**

In any proceedings in Scotland for an offence under section 1(1)(c) of, or by virtue of section 3(1)(a)(iii) of, this Act, the accused may be convicted on the evidence of one witness.”.

#### **37 Evidence by certificate**

Schedule 1 to the 1980 Act (certain certificates to be sufficient evidence in relation to statutory offences) shall have effect subject to the amendments specified in Schedule 4 to this Act.

#### *Procedure*

#### **38 Adjournment for inquiry etc. in summary proceedings at first calling**

- (1) Immediately preceding section 334 of the 1975 Act there shall be inserted the following section—

**“333A Adjournment for inquiry at first calling**

Without prejudice to section 338(1) of this Act, at the first calling of the case in a summary prosecution the court may, in order to allow time for inquiry into the case or for any other cause which it considers reasonable, adjourn the case under this section, for such period as it considers appropriate, without calling on the accused to plead to any charge against him but remanding him in custody or on bail or ordaining him to appear at the diet thus fixed; and the court may from time to time so adjourn the case, so however that—

- (a) where the accused is remanded in custody, the total period for which he is so remanded under this subsection shall not exceed twenty-one days and no one period of adjournment shall, except on special cause shown, exceed seven days; and
- (b) where he is remanded on bail or ordained to appear, no one period of adjournment shall exceed twenty eight days.”.

- (2) Section 328 of the 1975 Act (which admits of adjournment for inquiry in summary proceedings only where an accused has been apprehended) shall cease to have effect.

**39 New circumstances on notice of which preliminary diet may be ordered**

- (1) Section 76 of the 1975 Act (which specifies various circumstances on notice of which a preliminary diet shall or may be ordered) shall be amended as follows.

- (2) In subsection (1)—

- (a) after paragraph (b) there shall be inserted the following paragraph—
  - “(bb) that there are documents the truth of the contents of which ought in his view to be admitted, or that there is any other matter which in his view ought to be agreed, the court may make such order as is mentioned in paragraph (a) above;”; and
- (b) in paragraph (c), for the words “or (b)” there shall be substituted the words “, (b) or (bb)”.

- (3) In subsection (7)(c), after the word “paragraph” there shall be inserted the words “(bb) or”.

**40 Taking of other proceedings while jury out**

- (1) After section 155 of the 1975 Act there shall be inserted the following section—

**“155A Taking of other proceedings while jury out**

During the period in which, in any criminal trial, the jury are retired to consider their verdict, the judge may sit in any other proceedings; and the trial shall not fail by reason only of his so doing.”.

- (2) After section 360 of that Act there shall be inserted the following heading and section—

*“Interruption of proceedings***360A Interruption of summary proceedings for verdict in earlier trial**

- (1) Where the sheriff is sitting in any summary proceedings during the period in which the jury in any criminal trial in which he has presided are retired to consider their verdict, it shall be lawful, if he considers it appropriate to do so, to interrupt those proceedings—
  - (a) in order to receive the verdict of the jury and dispose of the cause to which it relates;
  - (b) to give a direction to the jury on any matter on which they may wish one from him, or to hear a request from them regarding any matter, as for example that a production may be made available for examination by them,
 and the interruption shall not affect the validity of the proceedings nor cause the instance to fall in respect of any person accused in the proceedings.
- (2) Subsection (5) of section 156 of this Act shall apply in respect of the interruption of summary proceedings as it applies in respect of the interruption of a trial.”.

**41 Date of commencement of sentence**

- (1) Each of sections 218 and 431 of the 1975 Act (consideration of time spent in custody) shall be amended as follows.
- (2) After the word “shall” there shall be inserted “(a)”.
- (3) At the end there shall be added the following words—
 

“or spent in custody awaiting extradition to the United Kingdom;

  - (b) specify the date of commencement of the sentence; and
  - (c) if that person—
    - (i) has spent a period of time in custody on remand awaiting trial or sentence; or
    - (ii) is an extradited prisoner for the purposes of this section, and the date specified under paragraph (b) above is not earlier than the date on which sentence is passed, state its reasons for not specifying an earlier date.”.
- (4) The existing words, as so amended, shall be subsection (1).
- (5) After that subsection there shall be inserted the following subsections—
 

“(2) A prisoner is an extradited prisoner for the purposes of this section if—

  - (a) he was tried for the offence in respect of which his sentence of imprisonment was imposed—
    - (i) after having been extradited to the United Kingdom; and
    - (ii) without having first been restored to the state from which extradited or having had an opportunity of leaving the United Kingdom; and

(b) he was for any period kept in custody while awaiting such extradition.

(3) In this section “extradited to the United Kingdom” means returned to the United Kingdom—

- (a) in pursuance of extradition arrangements (as defined in section 3 of the Extradition Act 1989);
- (b) under any law which corresponds to that Act and is a law of a designated Commonwealth country (as defined in section 5(1) of that Act);
- (c) under that Act as extended to a colony or under any corresponding law of a colony; or
- (d) in pursuance of a warrant of arrest endorsed in the Republic of Ireland under the law of that country corresponding to the Backing of Warrants (Republic of Ireland) Act 1965.”.

#### **42 Appeal by Lord Advocate against sentence in solemn proceedings etc**

(1) After section 228 of the 1975 Act (which provides for appeal by a person convicted on indictment) there shall be inserted the following section—

##### **“228A Appeal by Lord Advocate against sentence in solemn proceedings**

Where a person has been convicted on indictment, the Lord Advocate may appeal against the sentence passed on conviction—

- (a) if it appears to the Lord Advocate that the sentence is unduly lenient; or
- (b) on a point of law.”.

(2) In section 442 of that Act (which provides for appeal in summary proceedings)—

(a) in subsection (1), after paragraph (b) there shall be inserted the following paragraph—

“(c) the prosecutor in such proceedings may, in any class of case specified by order by the Secretary of State under this paragraph, so appeal against the sentence passed on such conviction if it appears to the prosecutor that the sentence is unduly lenient.”; and

(b) after subsection (2) there shall be added the following subsection—

“(3) The power of the Secretary of State to make an order under paragraph (c) of subsection (1) above shall be exercisable by statutory instrument; and any order so made shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.

#### **43 Prosecutor’s consent to or application for setting aside of conviction**

For section 453 of the 1975 Act there shall be substituted the following section—

##### **“453 Prosecutor’s consent to or application for setting aside of conviction**

(1) Where—

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

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- (a) an appeal has been taken under section 442(1)(a)(i) or (iii) of this Act or by suspension or otherwise and the prosecutor is not prepared to maintain the judgment appealed against he may, by a relevant minute, consent to the conviction being set aside either in whole or in part; or
  - (b) no such appeal has been taken but the prosecutor is, at any time, not prepared to maintain the judgment on which a conviction is founded he may, by a relevant minute, apply for the conviction so to be set aside.
- (2) For the purposes of subsection (1) above, a “relevant minute” is a minute, signed by the prosecutor—
  - (a) setting forth the grounds on which he is of the opinion that the judgment cannot be maintained; and
  - (b) written on the complaint or lodged with the clerk of court.
- (3) A copy of any minute under subsection (1) above shall be sent by the prosecutor to the convicted person or his solicitor and the clerk of court shall—
  - (a) thereupon ascertain, and note on the record, whether that person or solicitor desires to be heard by the High Court before the appeal, or as the case may be application, is disposed of; and
  - (b) thereafter transmit the complaint and relative proceedings to the Clerk of Justiciary.
- (4) The Clerk of Justiciary, on receipt of a complaint and relative proceedings transmitted under subsection (3) above, shall lay them before any judge of the High Court either in court or in chambers who, after hearing parties if they desire to be heard, may—
  - (a) set aside the conviction either in whole or in part and—
    - (i) award such expenses to the convicted person, both in the High Court and in the inferior court, as the judge may think fit; and
    - (ii) where the conviction is set aside in part, pass another (but not more severe) sentence in substitution for the sentence imposed in respect of that conviction; or
  - (b) refuse to set aside the conviction, in which case the complaint and proceedings shall be returned to the clerk of the inferior court.
- (5) Where an appeal has been taken and the complaint and proceedings in respect of that appeal returned under subsection (4)(b) above, the appellant shall be entitled to proceed with the appeal as if it had been marked on the date of their being received by the clerk of the inferior court on such return.
- (6) Where an appeal has been taken and a copy minute in respect of that appeal sent under subsection (3) above, the preparation of the draft stated case shall be delayed pending the decision of the High Court.
- (7) The period from an application being made under subsection (1)(b) above until its disposal under subsection (4) above (including the day of application and the day of disposal) shall, in relation to the conviction to which the application relates, be disregarded in any computation of time specified in any provision of this Part of this Act relating to appeals.”