Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART I

CRIMINAL COURTS

JURISDICTION AND POWERS

The High Court

1 Judges in the High Court.

(1) The Lord President of the Court of Session shall be the Lord Justice General and shall perform his duties as the presiding judge of the High Court.

(2) Every person who is appointed to the office of one of the Senators of the College of Justice in Scotland shall, by virtue of such appointment, be a Lord Commissioner of Justiciary in Scotland.

(3) If any difference arises as to the rotation of judges in the High Court, it shall be determined by the Lord Justice General, whom failing by the Lord Justice Clerk.

(4) Any Lord Commissioner of Justiciary may preside alone at the trial of an accused before the High Court.

(5) Without prejudice to subsection (4) above, in any trial of difficulty or importance it shall be competent for two or more judges in the High Court to preside for the whole or any part of the trial.

2 Fixing of High Court sittings.

(1) The High Court shall sit at such times and places as the Lord Justice General, whom failing the Lord Justice Clerk, may, after consultation with the Lord Advocate, determine.

(2) Without prejudice to subsection (1) above, the High Court shall hold such additional sittings as the Lord Advocate may require.

(3) Where an accused has been cited to attend a sitting of the High Court, the prosecutor may, at any time before the commencement of his trial, apply to the Court to transfer the case to another sitting of the High Court; and a single judge of the High Court may—

(a) after giving the accused or his counsel an opportunity to be heard; or

(b) on the joint application of all parties,

make an order for the transfer of the case.

(4) Where no cases have been indicted for a sitting of the High Court or if it is no longer expedient that a sitting should take place, it shall not be necessary for the sitting to take place.

(5) If any case remains indicted for a sitting which does not take place in pursuance of subsection (4) above, subsection (3) above shall apply in relation to the transfer of any other such case to another sitting.

Solemn courts: general

3 Jurisdiction and powers of solemn courts.

(1) The jurisdiction and powers of all courts of solemn jurisdiction, except so far as altered or modified by any enactment passed after the commencement of this Act, shall remain as at the commencement of this Act.

(2) Any crime or offence which is triable on indictment may be tried by the High Court sitting at any place in Scotland.

(3) The sheriff shall, without prejudice to any other or wider power conferred by statute, not be entitled, on the conviction on indictment of an accused, to pass a sentence of imprisonment for a term exceeding three years.

(4) Subject to subsection (5) below, where under any enactment passed or made before 1st January 1988 (the date of commencement of section 58 of the [M1]Criminal Justice (Scotland) Act 1987) an offence is punishable on conviction on indictment by imprisonment for a term exceeding two years but the enactment either expressly or impliedly restricts the power of the sheriff to impose a sentence of imprisonment for a term exceeding two years, it shall be competent for the sheriff to impose a sentence of imprisonment for a term exceeding two but not exceeding three years.

(5) Nothing in subsection (4) above shall authorise the imposition by the sheriff of a sentence in excess of the sentence specified by the enactment as the maximum sentence which may be imposed on conviction of the offence.

(6) Subject to any express exclusion contained in any enactment, it shall be lawful to indict in the sheriff court all crimes except murder, treason, rape and breach of duty by magistrates.

Marginal Citations

M1 1987 c.41.

The sheriff

4 Territorial 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 includes all criminal maritime causes and proceedings (including those applying to persons furth of Scotland) provided that the accused is, by virtue of any enactment or rule of law, subject to the jurisdiction of the sheriff before whom the case or proceeding is raised.

(2) Where an offence is alleged to have been committed in one district in a sheriffdom, it shall be competent to try that offence in a sheriff court in any other district in that sheriffdom.

(3) It shall not be competent for 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.

(4) The sheriff shall have a concurrent jurisdiction with every other court of summary jurisdiction in relation to all offences competent for trial in such courts.

5 The sheriff: summary jurisdiction and powers.

(1) The sheriff, sitting as a court of summary jurisdiction, shall continue to have all the jurisdiction and powers exercisable by him at the commencement of this Act.

(2) 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 the prescribed sum;

(b) to ordain the accused to find caution for good behaviour for any period not exceeding 12 months to an amount not exceeding the prescribed sum either in lieu of or in addition to a fine or in addition to imprisonment;

(c) failing payment of such fine, or on failure to find such caution, to award imprisonment in accordance with section 219 of this Act;

(d) to impose imprisonment, for any period not exceeding three months.

(3) 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.

(4) It shall be competent to prosecute summarily in the sheriff court the following offences—

(a) uttering a forged document;

(b) wilful fire-raising;

(c) robbery; and

(d) assault with intent to rob.

District courts

6 District courts: area, constitution and prosecutor.

(1) Each commission area shall be the district of a district court, and the places at which a district court sits and, subject to section 8 of this Act, the days and times when it sits at any given place, shall be determined by the local authority; and in determining where and when a district court should sit, the local authority shall have regard to the desirability of minimising the expense and inconvenience occasioned to those directly involved, whether as parties or witnesses, in the proceedings before the court.

(2) The jurisdiction and powers of the district court shall be exercisable by a stipendiary magistrate or by one or more justices, and no decision of the court shall be questioned on the ground that it was not constituted as required by this subsection unless objection was taken on that ground by or on behalf of a party to the proceedings not later than the time when the proceedings or the alleged irregularity began.

(3) All prosecutions in a commission area shall proceed at the instance of the procurator fiscal.

(4) The procurator fiscal for an area which includes a commission area shall have all the powers and privileges conferred on a district prosecutor by section 6 of the [M2]District Courts (Scotland) Act 1975.

(5) The prosecutions authorised by the said Act of 1975 under complaint by the procurator fiscal shall be without prejudice to complaints at the instance of any other person entitled to make the same.

(6) In this section—

"commission area" means the area of a local authority;

"justice" means a justice of the peace appointed or deemed to have been appointed under section 9 of the said Act of 1975; and

"local authority" means a council constituted under section 2 of the [M3]Local Government (Scotland) Act 1994.

Marginal Citations

M2 1975 c.20.

M3 1994 c.39.

7 District court: jurisdiction and powers.

(1) A district court shall continue to have all the jurisdiction and powers exercisable by it at the commencement of this Act.

(2) Where several offences, which if committed in one commission area could be tried under one complaint, are alleged to have been committed in different commission areas, proceedings may be taken for all or any of those offences under one complaint before the district court of any one of such commission areas, and any such offence may be dealt with, heard, tried, determined, adjudged and punished as if the offence had been wholly committed within the jurisdiction of that court.

(3) Except in so far as any enactment (including this Act or an enactment passed after this Act) otherwise provides, it shall be competent for a district court to try any statutory offence which is triable summarily.

(4) It shall be competent, whether or not the accused has been previously convicted of an offence inferring dishonest appropriation of property, for any of the following offences to be tried in the district court—

(a) theft or reset of theft;

(b) falsehood, fraud or wilful imposition;

(c) breach of trust or embezzlement,

where (in any such case) the amount concerned does not exceed level 4 on the standard scale.

(5) A district court when constituted by a stipendiary magistrate shall, in addition to the jurisdiction and powers mentioned in subsection (1) above, have the summary criminal jurisdiction and powers of a sheriff.

(6) The district court shall, without prejudice to any other or wider powers conferred by statute, be entitled on convicting of a common law offence—

(a) to impose imprisonment for any period not exceeding 60 days;

(b) to impose a fine not exceeding level 4 on the standard scale;

(c) to ordain the accused (in lieu of or in 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 level 4 on the standard scale;

(d) failing payment of such fine or on failure to find such caution, to award imprisonment in accordance with section 219 of this Act,

but in no case shall the total period of imprisonment imposed in pursuance of this subsection exceed 60 days.

(7) Without prejudice to any other or wider power conferred by any enactment, it shall not be competent for a district court, as respects any statutory offence—

(a) to impose a sentence of imprisonment for a period exceeding 60 days;

(b) to impose a fine of an amount exceeding level 4 on the standard scale; or

(c) to ordain an accused person to find caution for any period exceeding six months or to an amount exceeding level 4 on the standard scale.

(8) The district court shall not have jurisdiction to try or to pronounce sentence in the case of any person—

(a) found within its jurisdiction, and brought before it accused or suspected of having committed any offence at any place beyond its jurisdiction; or

(b) brought before it accused or suspected of having committed within its jurisdiction any of the following offences—

(i) murder, culpable homicide, robbery, rape, wilful fire-raising, or attempted wilful fire-raising;

(ii) theft by housebreaking, or housebreaking with intent to steal;

(iii) theft or reset, falsehood fraud or wilful imposition, breach of trust or embezzlement, where the value of the property is an amount exceeding level 4 on the standard scale;

(iv) assault causing the fracture of a limb, assault with intent to ravish, assault to the danger of life, or assault by stabbing;

(v) uttering forged documents or uttering forged bank or banker's notes, or offences under the Acts relating to coinage.

(9) Without prejudice to subsection (8) above, where either in the preliminary investigation or in the course of the trial of any offence it appears that the offence is one which—

(a) cannot competently be tried in the court before which an accused is brought; or

(b) in the opinion of the court in view of the circumstances of the case, should be dealt with by a higher court,

the court may take cognizance of the offence and commit the accused to prison for examination for any period not exceeding four days.

(10) Where an accused is committed as mentioned in subsection (9) above, the prosecutor in the court which commits the accused shall forthwith give notice of the committal to the procurator fiscal of the district within which the offence was committed or to such other official as is entitled to take cognizance of the offence in order that the accused may be dealt with according to law.

Sittings of sheriff and district courts

8 Sittings of sheriff and district courts.

(1) Notwithstanding any enactment or rule of law, a sheriff court or a district court—

(a) shall not be required to sit on any Saturday or Sunday or on a day which by virtue of subsection (2) or (3) below is a court holiday; but

(b) may sit on any day for the disposal of criminal business.

(2) A sheriff principal may in an order made under section 17(1)(b) of the [M4]Sheriff Courts (Scotland) Act 1971 prescribe in respect of criminal business not more than 10 days, other than Saturdays and Sundays, in a calendar year as court holidays in the sheriff courts within his jurisdiction; and may in the like manner prescribe as an additional court holiday any day which has been proclaimed, under section 1(3) of the [M5]Banking and Financial Dealings Act 1971, to be a bank holiday either throughout the United Kingdom or in a place or locality in the United Kingdom within his jurisdiction.

(3) Notwithstanding section 6(1) of this Act, a sheriff principal may, after consultation with the appropriate local authority, prescribe not more than 10 days, other than Saturdays and Sundays, in a calendar year as court holidays in the district courts within his jurisdiction; and he may, after such consultation, prescribe as an additional holiday any day which has been proclaimed, under section 1(3) of the said Banking and Financial Dealings Act 1971, to be a bank holiday either throughout the United Kingdom or in a place or locality in the United Kingdom within his jurisdiction.

(4) A sheriff principal may in pursuance of subsection (2) or (3) above prescribe different days as court holidays in relation to different sheriff or district courts.

Marginal Citations

M4 1978 c.58.

M5 1971 c.80.

Territorial jurisdiction: general

9 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, the 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 metres of any such boundary, or partly within the jurisdiction of one court and partly within the jurisdiction of another court or courts, the offence may be tried by any one of such courts.

(3) Where an offence is committed against any person or in respect of any property in or on any carriage, cart or vehicle employed in a journey by road or railway, or on board any vessel employed in a river, loch, canal or inland navigation, the offence may be tried by any court through whose jurisdiction the carriage, cart, vehicle or vessel passed in the course of the journey or voyage during which the offence was committed.

(4) Where several offences, which if committed in one sheriff court district could be tried under one indictment or 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 indictment or 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.

VALID FROM 27/06/2003

[F1 9A Competence of justice's actings outwith jurisdiction

It is competent for a justice, even if not present within his jurisdiction, to sign any warrant, judgment, interlocutor or other document relating to proceedings within that jurisdiction provided that when he does so he is present within Scotland.**]**

Textual Amendments

F1 S. 9A inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 59**, 89; S.S.I. 2003/288, **art. 2**, Sch.

10 Crimes committed in different districts.

(1) Where a person is alleged to have committed in more than one sheriff court district a crime or crimes to which subsection (2) below applies, he may be indicted to the sheriff court of such one of those districts as the Lord Advocate determines.

(2) This subsection applies to—

(a) a crime committed partly in one sheriff court district and partly in another;

(b) crimes connected with each other but committed in different sheriff court districts;

(c) crimes committed in different sheriff court districts in succession which, if they had been committed in one such district, could have been tried under one indictment.

(3) Where, in pursuance of subsection (1) above, a case is tried in the sheriff court of any sheriff court district, the procurator fiscal of that district shall have power to prosecute in that case even if the crime was in whole or in part committed in a different district, and the procurator fiscal shall have the like powers in relation to such case, whether before, during or after the trial, as he has in relation to a case arising out of a crime or crimes committed wholly within his own district.

VALID FROM 10/03/2008

[F2 10A Jurisdiction for transferred cases

(1) A sheriff has jurisdiction for any cases which come before the sheriff by virtue of—

(a) section 34A or 83 of this Act; or

(b) section 137A, 137B, 137C or 137D of this Act.

(2) A procurator fiscal for a sheriff court district shall have—

(a) power to prosecute in any cases which come before a sheriff of that district by virtue of a provision mentioned in subsection (1) above; and

(b) the like powers in relation to such cases as he has for the purposes of criminal proceedings which otherwise come before that sheriff.

(3) Subsections (1) and (2) above, and the provisions mentioned in subsection (1) above, are without prejudice to sections 4, 9 and 10 of this Act.**]**

Textual Amendments

F2 S. 10A inserted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) , ss. 80 , 84 , **Sch. para. 11** ; S.S.I. 2008/42 , **art. 3** , Sch.

11 Certain offences committed outside Scotland.

(1) Any British citizen or British subject who in a country outside the United Kingdom does any act or makes any omission which if done or made in Scotland would constitute the crime of murder or of culpable homicide shall be guilty of the same crime and subject to the same punishment as if the act or omission had been done or made in Scotland.

(2) Any British citizen or British subject employed in the service of the Crown who, in a foreign country, when acting or purporting to act in the course of his employment, does any act or makes any omission which if done or made in Scotland would constitute an offence punishable on indictment shall be guilty of the same offence and subject to the same punishment, as if the act or omission had been done or made in Scotland.

(3) A person may be proceeded against, indicted, tried and punished for an offence to which this section applies—

(a) in any sheriff court district in Scotland in which he is apprehended or is in custody; or

(b) in such sheriff court district as the Lord Advocate may determine,

as if the offence had been committed in that district, and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in that district.

(4) Any person who—

(a) has in his possession in Scotland property which he has stolen in any other part of the United Kingdom; or

(b) in Scotland receives property stolen in any other part of the United Kingdom,

may be dealt with, indicted, tried and punished in Scotland in like manner as if he had stolen it in Scotland.

VALID FROM 04/09/1998

[F3 11A Conspiracy to commit offences outside the United Kingdom.

(1) This section applies to any act done by a person in Scotland which would amount to conspiracy to commit an offence but for the fact that the criminal purpose is intended to occur in a country or territory outside the United Kingdom.

(2) Where a person does an act to which this section applies, the criminal purpose shall be treated as the offence mentioned in subsection (1) above and he shall, accordingly, be guilty of conspiracy to commit the offence.

(3) A person is guilty of an offence by virtue of this section only if the criminal purpose would involve at some stage—

(a) an act by him or another party to the conspiracy; or

(b) the happening of some other event,

constituting an offence under the law in force in the country or territory where the act or other event was intended to take place; and conduct punishable under the law in force in the country or territory is an offence under that law for the purposes of this section however it is described in that law.

(4) Subject to subsection (6) below, a condition specified in subsection (3) above shall be taken to be satisfied unless, not later than such time as High Court may, by Act of Adjournal, prescribe, the accused serves on the prosecutor a notice—

(a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in his opinion satisfied;

(b) setting out the grounds for his opinion; and

(c) requiring the prosecutor to prove that the condition is satisfied.

(5) In subsection (4) above "the relevant conduct" means the agreement to effect the criminal purpose.

(6) The court may permit the accused to require the prosecutor to prove that the condition mentioned in subsection (4) above is satisfied without the prior service of a notice under that subsection.

(7) In proceedings on indictment, the question whether a condition is satisfied shall be determined by the judge alone.

(8) Nothing in this section—

(a) applies to an act done before the day on which the Criminal Justice (Terrorism and Conspiracy) Act 1998 was passed, or

(b) imposes criminal liability on any person acting on behalf of, or holding office under, the Crown.**]**

Textual Amendments

F3 S. 11A inserted (4.9.1998) by Criminal Justice (Terrorism and Conspiracy) Act 1998 (c. 40), **s. 7**

PART II

POLICE FUNCTIONS

Lord Advocate's instructions

12 Instructions by Lord Advocate as to reporting of 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.

Detention and questioning

13 Powers relating to suspects and potential witnesses.

(1) Where a constable has reasonable grounds for suspecting that a person has committed or is committing an offence at any place, he may require—

(a) that person, if the constable finds him at that place or at any place where the constable is entitled to be, to give his name and address and may ask him for an explanation of the circumstances which have given rise to the constable's suspicion;

(b) any other person whom the constable finds at that place or at any place where the constable is entitled to be and who the constable believes has information relating to the offence, to give his name and address.

(2) The constable may require the person mentioned in paragraph (a) of subsection (1) above to remain with him while he (either or both)—

(a) subject to subsection (3) below, verifies any name and address given by the person;

(b) notes any explanation proffered by the person.

(3) The constable shall exercise his power under paragraph (a) of subsection (2) above only where it appears to him that such verification can be obtained quickly.

(4) A constable may use reasonable force to ensure that the person mentioned in paragraph (a) of subsection (1) above remains with him.

(5) A constable shall inform a person, when making a requirement of that person under—

(a) paragraph (a) of subsection (1) above, of his suspicion and of the general nature of the offence which he suspects that the person has committed or is committing;

(b) paragraph (b) of subsection (1) above, of his suspicion, of the general nature of the offence which he suspects has been or is being committed and that the reason for the requirement is that he believes the person has information relating to the offence;

(c) subsection (2) above, why the person is being required to remain with him;

(d) either of the said subsections, that failure to comply with the requirement may constitute an offence.

(6) A person mentioned in—

(a) paragraph (a) of subsection (1) above who having been required—

(i) under that subsection to give his name and address; or

(ii) under subsection (2) above to remain with a constable,

fails, without reasonable excuse, to do so, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale;

(b) paragraph (b) of the said subsection (1) who having been required under that subsection to give his name and address fails, without reasonable excuse, to do so shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(7) A constable may arrest without warrant any person who he has reasonable grounds for suspecting has committed an offence under subsection (6) above.

14 Detention and questioning at police station.

(1) Where a constable has reasonable grounds for suspecting that a person has committed or is committing an offence punishable by imprisonment, the constable may, for the purpose of facilitating the carrying out of investigations—

(a) into the offence; and

(b) as to whether criminal proceedings should be instigated against the person,

detain that person and take him as quickly as is reasonably practicable to a police station or other premises and may thereafter for that purpose take him to any other place and, subject to the following provisions of this section, the detention may continue at the police station or, as the case may be, the other premises or place.

(2) Detention under subsection (1) above shall be terminated not more than six hours after it begins or (if earlier)—

(a) when the person is arrested;

(b) when he is detained in pursuance of any other enactment; or

(c) where there are no longer such grounds as are mentioned in the said subsection (1),

and when a person has been detained under subsection (1) above, he shall be informed immediately upon the termination of his detention in accordance with this subsection that his detention has been terminated.

(3) Where a person has been released at the termination of a period of detention under subsection (1) above he shall not thereafter be detained, under that subsection, on the same grounds or on any grounds arising out of the same circumstances.

(4) Subject to subsection (5) below, where a person has previously been detained in pursuance of any other enactment, and is detained under subsection (1) above on the same grounds or on grounds arising from the same circumstances as those which led to his earlier detention, the period of six hours mentioned in subsection (2) above shall be reduced by the length of that earlier detention.

(5) Subsection (4) above shall not apply in relation to detention under section 41(3) of the [M6]Prisons (Scotland) Act 1989 (detention in relation to introduction etc. into prison of prohibited article), but where a person was detained under section 41(3) immediately prior to his detention under subsection (1) above the period of six hours mentioned in subsection (2) above shall be reduced by the length of that earlier detention.

(6) At the time when a constable detains a person under subsection (1) above, he shall inform the person of his suspicion, of the general nature of the offence which he suspects has been or is being committed and of the reason for the detention; and there shall be recorded—

(a) the place where detention begins and the police station or other premises to which the person is taken;

(b) any other place to which the person is, during the detention, thereafter taken;

(c) the general nature of the suspected offence;

(d) the time when detention under subsection (1) above begins and the time of the person's arrival at the police station or other premises;

(e) the time when the person is informed of his rights in terms of subsection (9) below and of subsection (1)(b) of section 15 of this Act and the identity of the constable so informing him;

(f) where the person requests such intimation to be sent as is specified in section 15(1)(b) of this Act, the time when such request is—

(i) made;

(ii) complied with; and

(g) the time of the person's release from detention or, where instead of being released he is arrested in respect of the alleged offence, the time of such arrest.

(7) Where a person is detained under subsection (1) above, a constable may—

(a) without prejudice to any relevant rule of law as regards the admissibility in evidence of any answer given, put questions to him in relation to the suspected offence;

(b) exercise the same powers of search as are available following an arrest.

(8) A constable may use reasonable force in exercising any power conferred by subsection (1), or by paragraph (b) of subsection (7), above.

(9) A person detained under subsection (1) above shall be under no obligation to answer any question other than to give his name and address, and a constable shall so inform him both on so detaining him and on arrival at the police station or other premises.

Marginal Citations

M6 1989 c.45.

VALID FROM 30/10/2010

[F4 14A Extension of period of detention under section 14

(1) This section applies in relation to a person who is being detained under section 14 of this Act ("the detained person").

(2) Before the expiry of the period of 12 hours mentioned in section 14(2), a custody review officer may, subject to subsection (4), authorise that period to be extended in relation to the detained person by a further period of 12 hours.

(3) The further period of 12 hours starts from the time when the period of detention would have expired but for the authorisation.

(4) A custody review officer may authorise the extension under subsection (2) in relation to the detained person only if the officer is satisfied that—

(a) the continued detention of the detained person is necessary to secure, obtain or preserve evidence (whether by questioning the person or otherwise) relating to an offence in connection with which the person is being detained,

(b) an offence in connection with which the detained person is being detained is one that is an indictable offence, and

(c) the investigation is being conducted diligently and expeditiously.

(5) Where subsection (4) or (5) of section 14 applies in relation to the detained person, the references in subsection (2) of this section to the period of 12 hours mentioned in section 14(2) are to be read as references to that period as reduced in accordance with subsection (4) or, as the case may be, (5) of section 14.

(6) Where a custody review officer authorises the extension under subsection (2), section 14 has effect in relation to the detained person as if the references in it to the period of 12 hours were references to that period as extended by virtue of the authorisation.

(7) In this section and section 14B, "custody review officer" means a constable—

(a) of the rank of inspector or above, and

(b) who has not been involved in the investigation in connection with which the person is detained.

Textual Amendments

F4 Ss. 14A, 14B inserted (30.10.2010) by Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), **ss. 3(2)**, 9 (with s. 4)

VALID FROM 30/10/2010

14B Extension under section 14A: procedure

(1) This section applies where a custody review officer is considering whether to authorise the extension under section 14A(2) of this Act in relation to a person who is being detained under section 14 of this Act ("the detained person").

(2) Before deciding whether to authorise the extension, the custody review officer must give either of the following persons an opportunity to make representations—

(a) the detained person, or

(b) any solicitor representing the detained person who is available at the time the officer is considering whether to authorise the extension.

(3) Representations may be oral or written.

(4) The custody review officer may refuse to hear oral representations from the detained person if the officer considers that the detained person is unfit to make representations because of the person's condition or behaviour.

(5) Where the custody review officer decides to authorise the extension, the officer must ensure that the following persons are informed of the decision and of the grounds on which the extension is authorised—

(a) the detained person, and

(b) any solicitor representing the detained person who is available at the time the decision is made.

(6) Subsection (7) applies where—

(a) the custody review officer decides to authorise the extension, and

(b) at the time of the decision, the detained person has not exercised rights under section 15 or 15A.

(7) The custody review officer must—

(a) ensure that the detained person is informed of the person's rights under section 15 or 15A which the person has not yet exercised, and

(b) decide whether there are any grounds, under section 15(1) or section 15A(7)(b) or (8) (as the case may be), for delaying the exercise of any of the rights.

(8) The custody review officer must make a written record of—

(a) the officer's decision on whether to authorise the extension, and

(b) any of the following which apply—

(i) the grounds on which the extension is authorised,

(ii) the fact that the detained person and a solicitor have been informed as required under subsection (5),

(iii) the fact that the detained person has been informed as required under subsection (7)(a),

(iv) the officer's decision on the matter referred to in subsection (7)(b) and, if the decision is to delay the exercise of a right, the grounds for the decision.**]**

Textual Amendments

F4 Ss. 14A, 14B inserted (30.10.2010) by Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), **ss. 3(2)**, 9 (with s. 4)

15 Rights of person arrested or detained.

(1) Without prejudice to section 17 of this Act, a person who, not being a person in respect of whose custody or detention subsection (4) below applies—

(a) has been arrested and is in custody in a police station or other premises, shall be entitled to have intimation of his custody and of the place where he is being held sent to a person reasonably named by him;

(b) is being detained under section 14 of this Act and has been taken to a police station or other premises or place, shall be entitled to have intimation of his detention and of the police station or other premises or place sent to a solicitor and to one other person reasonably named by him,

without delay or, where some delay is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders, with no more delay than is so necessary.

(2) A person shall be informed of his entitlement under subsection (1) above—

(a) on arrival at the police station or other premises; or

(b) where he is not arrested, or as the case may be detained, until after such arrival, on such arrest or detention.

(3) Where the person mentioned in paragraph (a) of subsection (1) above requests such intimation to be sent as is specified in that paragraph there shall be recorded the time when such request is—

(a) made;

(b) complied with.

(4) Without prejudice to the said section 17, a constable shall, where a person who has been arrested and is in such custody as is mentioned in paragraph (a) of subsection (1) above or who is being detained as is mentioned in paragraph (b) of that subsection appears to him to be a child, send without delay such intimation as is mentioned in the said paragraph (a), or as the case may be paragraph (b), to that person's parent if known; and the parent—

(a) in a case where there is reasonable cause to suspect that he has been involved in the alleged offence in resect of which the person has been arrested or detained, may; and

(b) in any other case shall,

be permitted access to the person.

(5) The nature and extent of any access permitted under subsection (4) above shall be subject to any restriction essential for the furtherance of the investigation or the well-being of the person.

(6) In subsection (4) above —

(a) "child" means a person under 16 years of age; and

(b) "parent" includes guardian and any person who has the **[**F5care**]** of a child.

Textual Amendments

F5 Word in s. 15(6)(b) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(2)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

Modifications etc. (not altering text)

C1 S. 15(1)(-(3) applied (5.12.2005) by Civil Partnership Act 2004 (c. 33), **ss. 116(4)**, 263; S.S.I. 2005/604, **art. 2** (subject to arts. 3, 4)

C2 S. 15(4) applied (19.2.2001) by 2000 c. 11, ss. 41, 53, Sch. 7 para. 6, **Sch. 8 para. 18(2)(b)**; S.I. 2001/421, **art. 2**

VALID FROM 30/10/2010

[F6 15A Right of suspects to have access to a solicitor

(1) This section applies to a person ("the suspect") who—

(a) is detained under section 14 of this Act,

(b) attends voluntarily at a police station or other premises or place for the purpose of being questioned by a constable on suspicion of having committed an offence, or

(c) is—

(i) arrested (but not charged) in connection with an offence, and

(ii) being detained at a police station or other premises or place for the purpose of being questioned by a constable in connection with the offence.

(2) The suspect has the right to have intimation sent to a solicitor of any or all of the following—

(a) the fact of the suspect's—

(i) detention,

(ii) attendance at the police station or other premises or place, or

(iii) arrest,

(as the case may be),

(b) the police station or other premises or place where the suspect is being detained or is attending, and

(c) that the solicitor's professional assistance is required by the suspect.

(3) The suspect also has the right to have a private consultation with a solicitor—

(a) before any questioning of the suspect by a constable begins, and

(b) at any other time during such questioning.

(4) Subsection (3) is subject to subsections (8) and (9).

(5) In subsection (3), "consultation" means consultation by such means as may be appropriate in the circumstances, and includes, for example, consultation by means of telephone.

(6) The suspect must be informed of the rights under subsections (2) and (3)—

(a) on arrival at the police station or other premises or place, and

(b) in the case where the suspect is detained as mentioned in subsection (1)(a), or arrested as mentioned in subsection (1)(c), after such arrival, on detention or arrest (whether or not, in either case, the suspect has previously been informed of the rights by virtue of this subsection).

(7) Where the suspect wishes to exercise a right to have intimation sent under subsection (2), the intimation must be sent by a constable—

(a) without delay, or

(b) if some delay is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders, with no more delay than is necessary.

(8) In exceptional circumstances, a constable may delay the suspect's exercise of the right under subsection (3) so far as it is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders that the questioning of the suspect by a constable begins or continues without the suspect having had a private consultation with a solicitor.

(9) Subsection (3) does not apply in relation to the questioning of the suspect by a constable for the purpose of obtaining the information mentioned in section 14(10) of this Act.**]**

Textual Amendments

F6 S. 15A inserted (30.10.2010) by Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), **ss. 1(4)**, 9 (with s. 4)

16 Drunken persons: power to take to designated place.

(1) Where a constable has power to arrest a person without a warrant for any offence and the constable has reasonable grounds for suspecting that that person is drunk, the constable may, if he thinks fit, take him to any place designated by the Secretary of State for the purposes of this section as a place suitable for the care of drunken persons.

(2) A person shall not by virtue of this section be liable to be detained in any such place as is mentioned in subsection (1) above, but the exercise in his case of the power conferred by this section shall not preclude his being charged with any offence.

Arrest: access to solicitor

17 Right of accused to have access to solicitor.

(1) Where an accused has been arrested on any criminal charge, he shall be entitled immediately upon such arrest —

(a) to have intimation sent to a solicitor that his professional assistance is required by the accused, and informing the solicitor—

(i) of the place where the person is being detained;

(ii) whether the person is to be liberated; and

(iii) if the person is not to be liberated, the court to which he is to be taken and the date when he is to be so taken; and

(b) to be told what rights there are under—

(i) paragraph (a) above;
(ii) subsection (2) below; and
(iii) section 35(1) and (2) of this Act.

(2) The accused and the solicitor shall be entitled to have a private interview before the examination or, as the case may be, first appearance.

VALID FROM 01/11/2002

[F7 17A Right of person accused of sexual offence to be told about restriction on conduct of defence: arrest

(1) An accused arrested on a charge of committing a sexual offence to which section 288C of this Act applies by virtue of subsection (2) of that section shall be entitled to be told, immediately upon his arrest—

(a) that, if he is tried for the offence charged, his defence may be conducted only by a lawyer;

(b) that it is, therefore, in his interests to get the professional assistance of a solicitor; and

(c) that if he does not engage a solicitor for the purposes of his defence at the trial, the court will do so.

(2) A failure to comply with subsection (1) above does not affect the validity or lawfulness of the arrest of the accused or any other element of any consequent proceedings against him.**]**

Textual Amendments

F7 S. 17A inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9) , s. 3 , **Sch. para. 2** ; S.S.I. 2002/443 , **art. 3** (with art. 4(3))

Prints and samples

18 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 14(1) of this Act.

(2) A constable may take from the person **[**F8, or require the person to provide him with, such relevant physical data**]** 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 **[**F9from him or require him to provide, and the person so required shall comply with that requirement**]**.

[F10(3) Subject to subsection (4) below, all record of any relevant physical data taken from or provided by a person under subsection (2) above, all samples taken under subsection (6) below and all information derived from such samples shall be destroyed as soon as possible 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 246(3) of this Act.**]**

(4) The duty under subsection (3) above to destroy samples taken under subsection (6) below and information derived from such samples shall not apply—

(a) where the destruction of the sample or the information could have the effect of destroying any sample, or any information derived therefrom, lawfully held in relation to a person other than the person from whom the sample was taken; or

(b) where the record, sample or information in question is of the same kind as a record, a sample or, as the case may be, information lawfully held by or on behalf of any police force in relation to the person.

(5) No sample, or information derived from a sample, retained by virtue of subsection (4) above shall be used—

(a) in evidence against the person from whom the sample was taken; or

(b) for the purposes of the investigation of any offence.

(6) 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 other than pubic hair, by means of cutting, combing or plucking, 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;

(d) from the inside of the mouth, by means of swabbing, a sample of saliva or other material.

(7) A constable may use reasonable force in exercising any power conferred by subsection (2) or (6) above.

[[F11](7A) For the purposes of this section and sections 19 to 20 of this Act "relevant physical data" means any—

(a) fingerprint;

(b) palm print;

(c) print or impression other than those mentioned in paragraph (a) and (b) above, of an external part of the body;

(d) record of a person's skin on an external part of the body created by a device approved by the Secretary of State.

(7B) The Secretary of State by order made by statutory instrument may approve a device for the purpose of creating such records as are mentioned in paragraph (d) of subsection (7A) above.**]**

(8) 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.

Textual Amendments

F8 Words in s. 18(2) substituted (1.8.1997) by 1997 c. 48, **s. 47(1)(a)(i)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F9 Words in s. 18(2) inserted (1.8.1997) by 1997 c. 48, **s. 47(1)(a)(ii)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F10 S. 18(3) substituted (*retrospective* to 1.8.1997) by 1998 c. 37, ss. 119, 119, **Sch. 8 para. 117(2)**

F11 S. 18(7A)(7B) inserted (1.8.1997) by 1997 c. 48, **s. 47(1)(d)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

VALID FROM 01/01/2007

[F12 18A Retention of samples etc.: prosecutions for sexual and violent offences

(1) This section applies to any sample, or any information derived from a sample, taken under subsection (6) or (6A) of section 18 of this Act, where the condition in subsection (2) below is satisfied.

(2) That condition is that criminal proceedings in respect of a relevant sexual offence or a relevant violent offence were instituted against the person from whom the sample was taken but those proceedings concluded otherwise than with a conviction or an order under section 246(3) of this Act.

(3) Subject to subsections (9) and (10) below, the sample or information shall be destroyed no later than the destruction date.

(4) The destruction date is—

(a) the date of expiry of the period of 3 years following the conclusion of the proceedings; or

(b) such later date as an order under subsection (5) below may specify.

(5) On a summary application made by the relevant chief constable within the period of 3 months before the destruction date the sheriff may, if satisfied that there are reasonable grounds for doing so, make an order amending, or further amending, the destruction date.

(6) An application under subsection (5) above may be made to any sheriff—

(a) in whose sheriffdom the person referred to in subsection (2) above resides;

(b) in whose sheriffdom that person is believed by the applicant to be; or

(c) to whose sheriffdom the person is believed by the applicant to be intending to come.

(7) An order under subsection (5) above shall not specify a destruction date more than 2 years later than the previous destruction date.

(8) The decision of the sheriff on an application under subsection (5) above may be appealed to the sheriff principal within 21 days of the decision; and the sheriff principal's decision on any such appeal is final.

(9) Subsection (3) above does not apply where—

(a) an application under subsection (5) above has been made but has not been determined;

(b) the period within which an appeal may be brought under subsection (8) above against a decision to refuse an application has not elapsed; or

(c) such an appeal has been brought but has not been withdrawn or finally determined.

(10) Where—

(a) the period within which an appeal referred to in subsection (9)(b) above may be brought has elapsed without such an appeal being brought;

(b) such an appeal is brought and is withdrawn or finally determined against the appellant; or

(c) an appeal brought under subsection (8) above against a decision to grant an application is determined in favour of the appellant,

the sample or information shall be destroyed as soon as possible thereafter.

(11) In this section—

"the relevant chief constable" means—

(a) the chief constable of the police force of which the constable who took or directed the taking of the sample was a member;

(b) the chief constable of the police force in the area of which the person referred to in subsection (2) above resides; or

(c) a chief constable who believes that that person is or is intending to come to the area of the chief constable's police force; and

"relevant sexual offence" and "relevant violent offence" have the same meanings as in section 19A(6) of this Act and include any attempt, conspiracy or incitement to commit such an offence.**]**

Textual Amendments

F12 S. 18A inserted (1.1.2007) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 83(2)**, 104; S.S.I. 2006/607, **art. 3**, Sch.

VALID FROM 28/03/2011

[F13 18B Retention of samples etc. where offer under sections 302 to 303ZA accepted

(1) This section applies to—

(a) relevant physical data taken from or provided by a person under section 18(2), and

(b) any sample, or any information derived from a sample, taken from a person under section 18(6) or (6A),

where the conditions in subsection (2) are satisfied.

(2) The conditions are—

(a) the relevant physical data or sample was taken from or provided by the person while the person was under arrest or being detained in connection with the offence or offences in relation to which a relevant offer is issued to the person, and

(b) the person—

(i) accepts a relevant offer, or

(ii) in the case of a relevant offer other than one of the type mentioned in paragraph (d) of subsection (3), is deemed to accept a relevant offer.

(3) In this section "relevant offer" means—

(a) a conditional offer under section 302,

(b) a compensation offer under section 302A,

(c) a combined offer under section 302B, or

(d) a work offer under section 303ZA.

(4) Subject to subsections (6) and (7) and section 18C(9) and (10), the relevant physical data, sample or information derived from a sample must be destroyed no later than the destruction date.

(5) In subsection (4), "destruction date" means—

(a) in relation to a relevant offer that relates only to—

(i) a relevant sexual offence,

(ii) a relevant violent offence, or

(iii) both a relevant sexual offence and a relevant violent offence, the date of expiry of the period of 3 years beginning with the date on which the relevant offer is issued or such later date as an order under section 18C(2) or (6) may specify,

(b) in relation to a relevant offer that relates to—

(i) an offence or offences falling within paragraph (a), and

(ii) any other offence,

the date of expiry of the period of 3 years beginning with the date on which the relevant offer is issued or such later date as an order under section 18C(2) or (6) may specify,

(c) in relation to a relevant offer that does not relate to an offence falling within paragraph (a), the date of expiry of the period of 2 years beginning with the date on which the relevant offer is issued.

(6) If a relevant offer is recalled by virtue of section 302C(5) or a decision to uphold it is quashed under section 302C(7)(a), all record of the relevant physical data, sample and information derived from a sample must be destroyed as soon as possible after—

(a) the prosecutor decides not to issue a further relevant offer to the person,

(b) the prosecutor decides not to institute criminal proceedings against the person, or

(c) the prosecutor institutes criminal proceedings against the person and those proceedings conclude otherwise than with a conviction or an order under section 246(3).

(7) If a relevant offer is set aside by virtue of section 303ZB, all record of the relevant physical data, sample and information derived from a sample must be destroyed as soon as possible after the setting aside.

(8) In this section, "relevant sexual offence" and "relevant violent offence" have, subject to the modification in subsection (9), the same meanings as in section 19A(6) and include any attempt, conspiracy or incitement to commit such an offence.

(9) The modification is that the definition of "relevant sexual offence" in section 19A(6) is to be read as if for paragraph (g) there were substituted—

"(g) public indecency if it is apparent from the relevant offer (as defined in section 18B(3)) relating to the offence that there was a sexual aspect to the behaviour of the person to whom the relevant offer is issued;".

Textual Amendments

F13 Ss. 18B, 18C inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 78**, 206(1)

VALID FROM 28/03/2011

18C Section 18B: extension of retention period where relevant offer relates to certain sexual or violent offences

(1) This section applies where the destruction date for relevant physical data, a sample or information derived from a sample falls within section 18B(5)(a) or (b).

(2) On a summary application made by the relevant chief constable within the period of 3 months before the destruction date, the sheriff may, if satisfied that there are reasonable grounds for doing so, make an order amending, or further amending, the destruction date.

(3) An application under subsection (2) may be made to any sheriff—

(a) in whose sheriffdom the appropriate person resides,

(b) in whose sheriffdom that person is believed by the applicant to be, or

(c) to whose sheriffdom the person is believed by the applicant to be intending to come.

(4) An order under subsection (2) must not specify a destruction date more than 2 years later than the previous destruction date.

(5) The decision of the sheriff on an application under subsection (2) may be appealed to the sheriff principal within 21 days of the decision.

(6) If the sheriff principal allows an appeal against the refusal of an application under subsection (2), the sheriff principal may make an order amending, or further amending, the destruction date.

(7) An order under subsection (6) must not specify a destruction date more than 2 years later than the previous destruction date.

(8) The sheriff principal's decision on an appeal under subsection (5) is final.

(9) Section 18B(4) does not apply where—

(a) an application under subsection (2) has been made but has not been determined,

(b) the period within which an appeal may be brought under subsection (5) against a decision to refuse an application has not elapsed, or

(c) such an appeal has been brought but has not been withdrawn or finally determined.

(10) Where—

(a) the period within which an appeal referred to in subsection (9)(b) may be brought has elapsed without such an appeal being brought,

(b) such an appeal is brought and is withdrawn or finally determined against the appellant, or

(c) an appeal brought under subsection (5) against a decision to grant an application is determined in favour of the appellant,

the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the period has elapsed, or, as the case may be, the appeal is withdrawn or determined.

(11) In this section—

"appropriate person" means the person from whom the relevant physical data was taken or by whom it was provided or from whom the sample was taken,

"destruction date" has the meaning given by section 18B(5),

"the relevant chief constable" has the same meaning as in subsection (11) of section 18A, with the modification that references to the person referred to in subsection (2) of that section are references to the appropriate person.**]**

Textual Amendments

F13 Ss. 18B, 18C inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 78**, 206(1)

VALID FROM 28/03/2011

[F14 18D Retention of samples etc. taken or provided in connection with certain fixed penalty offences

(1) This section applies to—

(a) relevant physical data taken from or provided by a person under section 18(2), and

(b) any sample, or any information derived from a sample, taken from a person under section 18(6) or (6A),

where the conditions in subsection (2) are satisfied.

(2) The conditions are—

(a) the person was arrested or detained in connection with a fixed penalty offence,

(b) the relevant physical data or sample was taken from or provided by the person while the person was under arrest or being detained in connection with that offence,

(c) after the relevant physical data or sample was taken from or provided by the person, a constable gave the person under section 129(1) of the 2004 Act—

(i) a fixed penalty notice in respect of that offence (the "main FPN"), or

(ii) the main FPN and one or more other fixed penalty notices in respect of fixed penalty offences arising out of the same circumstances as the offence to which the main FPN relates, and

(d) the person, in relation to the main FPN and any other fixed penalty notice of the type mentioned in paragraph (c)(ii)—

(i) pays the fixed penalty, or

(ii) pays any sum that the person is liable to pay by virtue of section 131(5) of the 2004 Act.

(3) Subject to subsections (4) and (5), the relevant physical data, sample or information derived from a sample must be destroyed before the end of the period of 2 years beginning with—

(a) where subsection (2)(c)(i) applies, the day on which the main FPN is given to the person,

(b) where subsection (2)(c)(ii) applies and—

(i) the main FPN and any other fixed penalty notice are given to the person on the same day, that day,

(ii) the main FPN and any other fixed penalty notice are given to the person on different days, the later day.

(4) Where—

(a) subsection (2)(c)(i) applies, and

(b) the main FPN is revoked under section 133(1) of the 2004 Act,

the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the revocation.

(5) Where—

(a) subsection (2)(c)(ii) applies, and

(b) the main FPN and any other fixed penalty notices are revoked under section 133(1) of the 2004 Act,

the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the revocations.

(6) In this section—

"the 2004 Act" means the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),

"fixed penalty notice" has the meaning given by section 129(2) of the 2004 Act,

"fixed penalty offence" has the meaning given by section 128(1) of the 2004 Act.**]**

Textual Amendments

F14 S. 18D inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 79**, 206(1)

VALID FROM 13/12/2010

[F15 18E Retention of samples etc.: children referred to children's hearings

(1) This section applies to—

(a) relevant physical data taken from or provided by a child under section 18(2); and

(b) any sample, or any information derived from a sample, taken from a child under section 18(6) or (6A),

where the first condition, and the second, third or fourth condition, are satisfied.

(2) The first condition is that the child's case has been referred to a children's hearing under section 65(1) of the Children (Scotland) Act 1995 (c.36) (the "Children Act").

(3) The second condition is that—

(a) a ground of the referral is that the child has committed an offence mentioned in subsection (6) (a "relevant offence");

(b) both the child and the relevant person in relation to the child accept, under section 65(5) or (6) of the Children Act, the ground of referral; and

(c) no application to the sheriff under section 65(7) or (9) of that Act is made in relation to that ground.

(4) The third condition is that—

(a) a ground of the referral is that the child has committed a relevant offence;

(b) the sheriff, on an application under section 65(7) or (9) of the Children Act—

(i) deems, under section 68(8) of the Children Act; or

(ii) finds, under section 68(10) of that Act,

the ground of referral to be established; and

(c) no application to the sheriff under section 85(1) of that Act is made in relation to that ground.

(5) The fourth condition is that the sheriff, on an application under section 85(1) of the Children Act—

(a) is satisfied, under section 85(6)(b) of that Act, that a ground of referral which constitutes a relevant offence is established; or

(b) finds, under section 85(7)(b) of that Act, that—

(i) a ground of referral, which was not stated in the original application under section 65(7) or (9) of that Act, is established; and

(ii) that ground constitutes a relevant offence.

(6) A relevant offence is such relevant sexual offence or relevant violent offence as the Scottish Ministers may by order made by statutory instrument prescribe.

(7) An order under subsection (6) may prescribe a relevant violent offence by reference to a particular degree of seriousness.

(8) Subject to section 18F(8) and (9), the relevant physical data, sample or information derived from a sample must be destroyed no later than the destruction date.

(9) The destruction date is—

(a) the date of expiry of the period of 3 years following—

(i) where the second condition is satisfied, the date on which the ground of referral was accepted as mentioned in that condition;

(ii) where the third condition is satisfied, the date on which the ground of referral was established as mentioned in that condition;

(iii) where the ground of referral is established as mentioned in paragraph (a) of the fourth condition, the date on which that ground was established under section 68(8) or, as the case may be, (10) of the Children Act; or

(iv) where the ground of referral is established as mentioned in paragraph (b) of the fourth condition, the date on which that ground was established as mentioned in that paragraph; or

(b) such later date as an order under section 18F(1) may specify.

(10) No statutory instrument containing an order under subsection (6) may be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

(11) In this section—

"relevant person" has the same meaning as in section 93(2) of the Children Act;

"relevant sexual offence" and "relevant violent offence" have, subject to the modification in subsection (12), the same meanings as in section 19A(6) and include any attempt, conspiracy or incitement to commit such an offence.

(12) The modification is that the definition of "relevant sexual offence" in section 19A(6) is to be read as if for paragraph (g) there were substituted—

""(g)public indecency if it is apparent from the ground of referral relating to the offence that there was a sexual aspect to the behaviour of the child;"".

Textual Amendments

F15 Ss. 18E, 18F inserted (13.12.2010 for the insertion of s. 18E(6)(7)(10), 15.4.2011 in so far as not already in force) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 80**, 206(1); S.S.I. 2010/413, art. 2, sch.; S.S.I. 2011/178, art. 2, sch. (with art. 7)

VALID FROM 13/12/2010

18F Retention of samples etc. relating to children: appeals

(1) On a summary application made by the relevant chief constable within the period of 3 months before the destruction date the sheriff may, if satisfied that there are reasonable grounds for doing so, make an order amending, or further amending, the destruction date.

(2) An application under subsection (1) may be made to any sheriff—

(a) in whose sheriffdom the child mentioned in section 18E(1) resides;

(b) in whose sheriffdom that child is believed by the applicant to be; or

(c) to whose sheriffdom that child is believed by the applicant to be intending to come.

(3) An order under subsection (1) must not specify a destruction date more than 2 years later than the previous destruction date.

(4) The decision of the sheriff on an application under subsection (1) may be appealed to the sheriff principal within 21 days of the decision.

(5) If the sheriff principal allows an appeal against the refusal of an application under subsection (1), the sheriff principal may make an order amending, or further amending, the destruction date.

(6) An order under subsection (5) must not specify a destruction date more than 2 years later than the previous destruction date.

(7) The sheriff principal's decision on an appeal under subsection (4) is final.

(8) Section 18E(8) does not apply where—

(a) an application under subsection (1) has been made but has not been determined;

(b) the period within which an appeal may be brought under subsection (4) against a decision to refuse an application has not elapsed; or

(c) such an appeal has been brought but has not been withdrawn or finally determined.

(9) Where—

(a) the period within which an appeal referred to in subsection (8)(b) may be brought has elapsed without such an appeal being brought;

(b) such an appeal is brought and is withdrawn or finally determined against the appellant; or

(c) an appeal brought under subsection (4) against a decision to grant an application is determined in favour of the appellant,

the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the period has elapsed or, as the case may be, the appeal is withdrawn or determined.

(10) In this section—

"destruction date" has the meaning given by section 18E(9); and

"relevant chief constable" has the same meaning as in subsection (11) of section 18A, with the modification that references to the person referred to in subsection (2) of that section are references to the child referred to in section 18E(1).**]**

Textual Amendments

F15 Ss. 18E, 18F inserted (13.12.2010 for the insertion of s. 18E(6)(7)(10), 15.4.2011 in so far as not already in force) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 80**, 206(1); S.S.I. 2010/413, art. 2, sch.; S.S.I. 2011/178, art. 2, sch. (with art. 7)

19 Prints, samples etc. in criminal investigations: supplementary provisions.

(1) This section applies where a person convicted of an offence—

(a) has not, since the conviction, had **[**F16taken from him, or been required to provide, any relevant physical data or had any impression or sample**]** taken from him; or

(b) has **[**F17at any time had—

(i) taken from him or been required (whether under paragraph (a) above or under section 18 or 19A of this Act or otherwise) to provide any relevant physical data; or

(ii) any impression or sample taken from him,

which was not suitable for the means of analysis for which the data were taken or required or the impression or sample was taken**]** or, though suitable, was insufficient (either in quantity or in quality) to enable information to be obtained by that means of analysis.

(2) Where this section applies, a constable may, within the permitted period—

[F18(a) take from or require the convicted person to provide him with such relevant physical data as he reasonably considers it appropriate to take or, as the case may be, require the provision of**]**; and

(b) with the authority of an officer of a rank no lower than inspector, take from the person any sample mentioned in any of paragraphs (a) to (d) of subsection (6) of section 18 of this Act by the means specified in that paragraph in relation to that sample.

(3) A constable—

(a) may require the convicted person to attend a police station for the purposes of subsection (2) above;

(b) may, where the convicted person is in legal custody by virtue of section 295 of this Act, exercise the powers conferred by subsection (2) above in relation to the person in the place where he is for the time being.

(4) In subsection (2) above, "the permitted period" means—

(a) in a case to which paragraph (a) of subsection (1) above applies, the period of one month beginning with the date of the conviction;

(b) in a case to which paragraph (b) of that subsection applies, the period of one month beginning with the date on which a constable of the police force which instructed the analysis receives written intimation that **[**F19the relevant physical data were or**]**the sample F20. . .was unsuitable or, as the case may be, insufficient as mentioned in that paragraph.

(5) A requirement under subsection (3)(a) above—

(a) shall give the person at least seven days' notice of the date on which he is required to attend;

(b) may direct him to attend at a specified time of day or between specified times of day.

(6) Any constable may arrest without warrant a person who fails to comply with a requirement under subsection (3)(a) above.

Textual Amendments

F16 Words in s. 19(1)(a) substituted (1.8.1997) by 1997 c. 48, **s. 47(2)(a)(i)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F17 Words and s. 19(1)(b)(i)(ii) substituted (1.8.1997) for words in s. 19(1)(b) by 1997 c. 48, **s. 47(2)(a)(ii)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F18 S. 19(2)(a) substituted (1.8.1997) by 1997 c. 48, **s. 47(2)(b)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F19 Words in s. 19(4)(b) inserted (1.8.1997) by 1997 c. 48, **s. 47(2)(c)(i)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F20 Words in s. 19(4)(b) repealed (1.8.1997) by 1997 c. 48, ss. 47(2)(c)(ii), 62(2), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

VALID FROM 17/11/1997

[F21 19A Samples etc. from persons convicted of sexual and violent offences.

(1) This section applies where a person—

(a) is convicted on or after the relevant date of a relevant offence and is sentenced to imprisonment;

(b) was convicted before the relevant date of a relevant offence, was sentenced to imprisonment and is serving that sentence on or after the relevant date;

(c) was convicted before the relevant date of a specified relevant offence, was sentenced to imprisonment, is not serving that sentence on that date or at any time after that date but was serving it at any time during the period of five years ending with the day before that date.

(2) Subject to subsections (3) and (4) below, where this section applies a constable may—

(a) take from the person or require the person to provide him with such relevant physical data as the constable reasonably considers appropriate; and

(b) with the authority of an officer of a rank no lower than inspector, take from the person any sample mentioned in any of paragraphs (a) to (d) of subsection (6) of section 18 of this Act by the means specified in that paragraph in relation to that sample.

(3) The power conferred by subsection (2) above shall not be exercised where the person has previously had taken from him or been required to provide relevant physical data or any sample under section 19(1)(a) of this Act or under this section unless the data so taken or required have been or, as the case may be, the sample so taken or required has been lost or destroyed.

(4) Where this section applies by virtue of—

(a) paragraph (a) or (b) of subsection (1) above, the powers conferred by subsection (2) above may be exercised at any time when the person is serving his sentence; and

(b) paragraph (c) of the said subsection (1), those powers may only be exercised within a period of three months beginning on the relevant date.

(5) Where a person in respect of whom the power conferred by subsection (2) above may be exercised—

(a) is no longer serving his sentence of imprisonment, subsections (3)(a), (5) and (6);

(b) is serving his sentence of imprisonment, subsection (3)(b),

of section 19 of this Act shall apply for the purposes of subsection (2) above as they apply for the purposes of subsection (2) of that section.

(6) In this section—

"conviction" includes—

(a) an acquittal, by virtue of section 54(6) or 55(3) of this Act, on the ground of the person's insanity at the time at which he committed the act constituting the relevant offence;

(b) a finding under section 55(2) of this Act,

and "convicted" shall be construed accordingly;

"relevant date" means the date on which section 48 of the [M7]Crime and Punishment (Scotland) Act 1997 is commenced;

"relevant offence" means any relevant sexual offence or any relevant violent offence;

"relevant sexual offence" means any of the following offences—

(a) rape;

(b) clandestine injury to women;

(c) abduction of a woman with intent to rape;

(d) assault with intent to rape or ravish;

(e) indecent assault;

(f) lewd, indecent or libidinous behaviour or practices;

(g) shameless indecency;

(h) sodomy; and

(i) any offence which consists of a contravention of any of the following statutory provisions—

(i) section 52 of the [M8]Civic Government (Scotland) Act 1982 (taking and distribution of indecent images of children);

(ii) section 52A of that Act (possession of indecent images of children);

(iii) section 106 of the [M9]Mental Health (Scotland) Act 1984 (protection of mentally handicapped females);

(iv) section 107 of that Act (protection of patients);

(v) section 1 of the [M10]Criminal Law (Consolidation)(Scotland) Act 1995 (incest);

(vi) section 2 of that Act (intercourse with step-child);

(vii) section 3 of that Act (intercourse with child under 16 years by person in position of trust);

(viii) section 5(1) or (2) of that Act (unlawful intercourse with girl under 13 years);

(ix) section 5(3) of that Act (unlawful intercourse with girl aged between 13 and 16 years);

(x) section 6 of that Act (indecent behaviour towards girl between 12 and 16 years);

(xi) section 7 of that Act (procuring);

(xii) section 8 of that Act (abduction and unlawful detention of women and girls);

(xiii) section 9 of that Act (permitting use of premises for unlawful sexual intercourse);

(xiv) section 10 of that Act (liability of parents etc in respect of offences against girls under 16 years);

(xv) section 11(1)(b) of that Act (soliciting for immoral purpose);

(xvi) section 13(5)(b) and (c) of that Act (homosexual offences);

"relevant violent offence" means any of the following offences—

(a) murder or culpable homicide;

(b) uttering a threat to the life of another person;

(c) perverting the course of justice in connection with an offence of murder;

(d) fire raising;

(e) assault;

(f) reckless conduct causing actual injury;

(g) abduction; and

(h) any offence which consists of a contravention of any of the following statutory provisions—

(i) sections 2 (causing explosion likely to endanger life) or 3 (attempting to cause such an explosion) of the [M11]Explosive Substances Act 1883;

(ii) section 12 of the [M12]Children and Young Persons (Scotland) Act 1937 (cruelty to children);

(iii) sections 16 (possession of firearm with intent to endanger life or cause serious injury), 17 (use of firearm to resist arrest) or 18 (having a firearm for purpose of committing an offence listed in Schedule 2) of the [M13]Firearms Act 1968;

(iv) section 6 of the [M14]Child Abduction Act 1984 (taking or sending child out of the United Kingdom); and

"sentence of imprisonment" means the sentence imposed in respect of the relevant offence and includes—

(a) a hospital order, a restriction order, a hospital direction and any order under section 57(2)(a) or (b) of this Act; and

(b) a sentence of detention imposed under section 207 or 208 of this Act,

and "sentenced to imprisonment" shall be construed accordingly; and any reference to a person serving his sentence shall be construed as a reference to the person being detained in a prison, hospital or other place in pursuance of a sentence of imprisonment; and

"specified relevant offence" means—

(a) any relevant sexual offence mentioned in paragraphs (a), (b), (f) and (i)(viii) of the definition of that expression and any such offence as is mentioned in paragraph (h) of that definition where the person against whom the offence was committed did not consent; and

(b) any relevant violent offence mentioned in paragraph (a) or (g) of the definition of that expression and any such offence as is mentioned in paragraph (e) of that definition where the assault is to the victim's severe injury,

but, notwithstanding subsection (7) below, does not include—

(i) conspiracy or incitement to commit; and

(ii) aiding and abetting, counselling or procuring the commission of,

any of those offences.

(7) In this section—

(a) any reference to a relevant offence includes a reference to any attempt, conspiracy or incitement to commit such an offence; and

(b) any reference to—

(i) a relevant sexual offence mentioned in paragraph (i); or

(ii) a relevant violent offence mentioned in paragraph (h),

of the definition of those expressions in subsection (6) above includes a reference to aiding and abetting, counselling or procuring the commission of such an offence.**]**

Textual Amendments

F21 S. 19A inserted (17.11.1997) by 1997 c. 48, **s. 48(2)**; S.I. 1997/2694, **art. 2(2)(b)**

Marginal Citations

M7 1997 c.48.
M8 1982 c.45.
M9 1984 c.36.
M10 1995 c.39.
M11 1883 c.3.
M12 1937 c.37.
M13 1968 c.27.
M14 1984 c.37.

VALID FROM 01/09/2006

[F22 19AA Samples etc. from sex offenders

(1) This section applies where a person is subject to—

(a) the notification requirements of Part 2 of the 2003 Act;

(b) an order under section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9)(a risk of sexual harm order); or

(c) an order under section 123 of the 2003 Act (which makes provision for England and Wales and Northern Ireland corresponding to section 2 of that Act of 2005).

(2) This section applies regardless of whether the person became subject to those requirements or that order before or after the commencement of this section.

(3) Subject to subsections (4) to (8) below, where this section applies a constable may—

(a) take from the person or require the person to provide him with such relevant physical data as the constable considers reasonably appropriate;

(b) with the authority of an officer of a rank no lower than inspector, take from the person any sample mentioned in any of paragraphs (a) to (c) of subsection (6) of section 18 of this Act by the means specified in that paragraph in relation to that sample;

(c) take, or direct a police custody and security officer to take, from the person any sample mentioned in subsection (6A) of that section by the means specified in that subsection.

(4) Where this section applies by virtue of subsection (1)(c) above, the power conferred by subsection (3) shall not be exercised unless the constable reasonably believes that the person's sole or main residence is in Scotland.

(5) The power conferred by subsection (3) above shall not be exercised where the person has previously had taken from him or been required to provide relevant physical data or any sample under section 19(2) or 19A(2) of this Act unless the data so taken or required have been or, as the case may be, the sample so taken has been, lost or destroyed.

(6) The power conferred by subsection (3) above shall not be exercised where the person has previously had taken from him or been required to provide relevant physical data or any sample under that subsection unless the data so taken or required or, as the case may be, the sample so taken—

(a) have or has been lost or destroyed; or

(b) were or was not suitable for the particular means of analysis or, though suitable, were or was insufficient (either in quantity or quality) to enable information to be obtained by that means of analysis.

(7) The power conferred by subsection (3) above may be exercised only—

(a) in a police station; or

(b) where the person is in legal custody by virtue of section 295 of this Act, in the place where the person is for the time being.

(8) The power conferred by subsection (3) above may be exercised in a police station only—

(a) where the person is present in the police station in pursuance of a requirement made by a constable to attend for the purpose of the exercise of the power; or

(b) while the person is in custody in the police station following his arrest or detention under section 14(1) of this Act in connection with any offence.

(9) A requirement under subsection (8)(a) above—

(a) shall give the person at least seven days' notice of the date on which he is required to attend;

(b) may direct him to attend at a specified time of day or between specified times of day; and

(c) where this section applies by virtue of subsection (1)(b) or (c) above, shall warn the person that failure, without reasonable excuse, to comply with the requirement or, as the case may be, to allow the taking of or to provide any relevant physical data, or to provide any sample, under the power, constitutes an offence.

(10) A requirement under subsection (8)(a) above in a case where the person has previously had taken from him or been required to provide relevant physical data or any sample under subsection (3) above shall contain intimation that the relevant physical data were or the sample was unsuitable or, as the case may be, insufficient, as mentioned in subsection (6)(b) above.

(11) Before exercising the power conferred by subsection (3) above in a case to which subsection (8)(b) above applies, a constable shall inform the person of that fact.

(12) Any constable may arrest without warrant a person who fails to comply with a requirement under subsection (8)(a) above.

(13) This section does not prejudice the generality of section 18 of this Act.

(14) In this section, "the 2003 Act" means the Sexual Offences Act 2003 (c. 42).".

Textual Amendments

F22 Ss. 19AA, 19AB inserted (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 77(2)**, 104; S.S.I. 2006/432, **art. 2(d)**

VALID FROM 01/09/2006

19AB Section 19AA: supplementary provision in risk of sexual harm order cases

(1) This section applies where section 19AA of this Act applies by virtue of subsection (1)(b) or (c) of that section.

(2) A person who fails without reasonable excuse—

(a) to comply with a requirement made of him under section 19AA(8)(a) of this Act; or

(b) to allow relevant physical data to be taken from him, to provide relevant physical data, or to allow a sample to be taken from him, under section 19AA(3) of this Act,

shall be guilty of an offence.

(3) A person guilty of an offence under subsection (2) above shall be liable on summary conviction to the following penalties—

(a) a fine not exceeding level 4 on the standard scale;

(b) imprisonment for a period—

(i) where the conviction is in the district court, not exceeding 60 days; or

(ii) where the conviction is in the sheriff court, not exceeding 3 months; or

(c) both such fine and such imprisonment.

(4) Subject to subsection (6) below, all record of any relevant physical data taken from or provided by a person under section 19AA(3) of this Act, all samples taken from a person under that subsection and all information derived from such samples shall be destroyed as soon as possible following the person ceasing to be a person subject to any risk of sexual harm orders.

(5) For the purpose of subsection (4) above, a person does not cease to be subject to a risk of sexual harm order where the person would be subject to such an order but for an order under section 6(2) of the 2005 Act or any corresponding power of a court in England and Wales or in Northern Ireland.

(6) Subsection (4) above does not apply if before the duty to destroy imposed by that subsection would apply, the person—

(a) is convicted of an offence; or

(b) becomes subject to the notification requirements of Part 2 of the 2003 Act.

(7) In this section—

"risk of sexual harm order" means an order under—

(a) section 2 of the 2005 Act; or

(b) section 123 of the 2003 Act;

"the 2005 Act" means the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9);

"the 2003 Act" has the meaning given by section 19AA(14) of this Act; and

"convicted" shall be construed in accordance with section 19A(6) of this Act.**]**

Textual Amendments

F22 Ss. 19AA, 19AB inserted (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 77(2)**, 104; S.S.I. 2006/432, **art. 2(d)**

VALID FROM 17/11/1997

[F23 19B Power of constable in obtaining relevant physical data etc.

A constable may use reasonable force in—

(a) taking any relevant physical data from a person or securing a person's compliance with a requirement made under section 18(2), 19(2)(a) or 19A(2)(a) of this Act;

(b) exercising any power conferred by section 18(6), 19(2)(b) or 19A(2)(b) of this Act.**]**

Textual Amendments

F23 S. 19(B) inserted (17.11.1997) by 1997 c. 48, **s. 48(2)**; S.I. 1997/2694, **art. 2(2)(b)**

VALID FROM 01/08/2011

[F24 19C Sections 18 and 19 to 19AA: use of samples etc.

(1) Subsection (2) applies to—

(a) relevant physical data taken or provided under section 18(2), 19(2)(a), 19A(2)(a) or 19AA(3)(a),

(b) a sample, or any information derived from a sample, taken under section 18(6) or (6A), 19(2)(b) or (c), 19A(2)(b) or (c) or 19AA(3)(b) or (c),

(c) relevant physical data or a sample taken from a person—

(i) by virtue of any power of search,

(ii) by virtue of any power to take possession of evidence where there is immediate danger of its being lost or destroyed, or

(iii) under the authority of a warrant,

(d) information derived from a sample falling within paragraph (c), and

(e) relevant physical data, a sample or information derived from a sample taken from, or provided by, a person outwith Scotland which is given by any person to—

(i) a police force,

(ii) the Scottish Police Services Authority, or

(iii) a person acting on behalf of a police force.

(2) The relevant physical data, sample or information derived from a sample may be used—

(a) for the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or

(b) for the identification of a deceased person or a person from whom the relevant physical data or sample came.

(3) Subsections (4) and (5) apply to relevant physical data, a sample or information derived from a sample falling within any of paragraphs (a) to (d) of subsection (1) ("relevant material").

(4) If the relevant material is held by a police force, the Scottish Police Services Authority or a person acting on behalf of a police force, the police force or, as the case may be, the Authority or person may give the relevant material to another person for use by that person in accordance with subsection (2).

(5) A police force, the Scottish Police Services Authority or a person acting on behalf of a police force may, in using the relevant material in accordance with subsection (2), check it against other relevant physical data, samples and information derived from samples received from another person.

(6) In subsection (2)—

(a) the reference to crime includes a reference to—

(i) conduct which constitutes a criminal offence or two or more criminal offences (whether under the law of a part of the United Kingdom or a country or territory outside the United Kingdom), or

(ii) conduct which is, or corresponds to, conduct which, if it all took place in any one part of the United Kingdom would constitute a criminal offence or two or more criminal offences,

(b) the reference to an investigation includes a reference to an investigation outside Scotland of a crime or suspected crime, and

(c) the reference to a prosecution includes a reference to a prosecution brought in respect of a crime in a country or territory outside Scotland.

(7) This section is without prejudice to any other power relating to the use of relevant physical data, samples or information derived from a sample.**]**

Textual Amendments

F24 S. 19C inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 82(1)**, 206(1)

20 Use of prints, samples etc.

Without prejudice to any power to do so apart from this section, **[**[F25]relevant physical data**]**, impressions and samples lawfully held by or on behalf of any police force or in connection with or as a result of an investigation of an offence and information derived therefrom may be checked against other such **[**[F25]data**]**, impressions, samples and information.

Textual Amendments

F25 Words in s. 20 substituted (1.8.1997) by 1997 c. 48, **s. 47(3)(a)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)
Words in s. 20 substituted (1.8.1997) by 1997 c. 48, **s. 47(3)(b)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

Modifications etc. (not altering text)

C3 S. 20 applied (with modifications) (prosp.) by the Terrorism Act 2002 (c. 11), Sch. 8 para. 21 (as inserted by Counter-Terrorism Act 2008 (c. 28), **ss. 17(3)**, 91, 100) (with s. 101(2))

VALID FROM 01/01/2007

[[F26]*Testing for Class A drugs*

Textual Amendments

F26 Ss. 20A, 20B and preceding cross-heading inserted (1.1.2007 for certain purposes, 25.2.2007 in regard to the inserted s. 20B(3), and otherwise in force at 12.6.2007) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 84**, 104; S.S.I. 2006/607, **art. 3**, Sch.; S.S.I. 2007/84, {art. 3(1)(a)(4))(a)}

20A Arrested persons: testing for certain Class A drugs

(1) Subject to subsection (2) below, where subsection (3) below applies an appropriate officer may—

(a) require a person who has been arrested and is in custody in a police station to provide him with a sample of urine; or

(b) take from the inside of the mouth of such a person, by means of swabbing, a sample of saliva or other material,

which the officer may subject to analysis intended to reveal whether there is any relevant Class A drug in the person's body.

(2) The power conferred by subsection (1) above shall not be exercised where the person has previously been required to provide or had taken from him a sample under that subsection in the same period in custody.

(3) This subsection applies where—

(a) the person is of 16 years of age or more;

(b) the period in custody in the police station has not exceeded 6 hours;

(c) the police station is situated in an area prescribed by order made by statutory instrument by the Scottish Ministers; and

(d) either—

(i) the person's arrest was on suspicion of committing or having committed a relevant offence; or

(ii) a senior police officer who has appropriate grounds has authorised the making of the requirement to provide or the taking of the sample.

(4) Before exercising the power conferred by subsection (1) above, an appropriate officer shall—

(a) warn the person in respect of whom it is to be exercised that failure, without reasonable excuse, to comply with the requirement or, as the case may be, allow the sample to be taken constitutes an offence; and

(b) in a case within subsection (3)(d)(ii) above, inform the person of the giving of the authorisation and the grounds for the suspicion.

(5) Where—

(a) a person has been required to provide or has had taken a sample under subsection (1) above;

(b) any of the following is the case—

(i) the sample was not suitable for the means of analysis to be used to reveal whether there was any relevant Class A drug in the person's body;

(ii) though suitable, the sample was insufficient (either in quantity or quality) to enable information to be obtained by that means of analysis; or

(iii) the sample was destroyed during analysis and the means of analysis failed to produce reliable information; and

(c) the person remains in custody in the police station (whether or not the period of custody has exceeded 6 hours),

an appropriate officer may require the person to provide or as the case may be take another sample of the same kind by the same method.

(6) Before exercising the power conferred by subsection (5) above, an appropriate officer shall warn the person in respect of whom it is to be exercised that failure, without reasonable excuse, to comply with the requirement or, as the case may be, allow the sample to be taken constitutes an offence.

(7) A person who fails without reasonable excuse—

(a) to comply with a requirement made of him under subsection (1)(a) or (5) above; or

(b) to allow a sample to be taken from him under subsection (1)(b) or (5) above,

shall be guilty of an offence.

(8) In this section—

"appropriate grounds" means reasonable grounds for suspecting that the misuse by the person of any relevant Class A drug caused or contributed to the offence on suspicion of which the person was arrested;

"appropriate officer" means—

(a) a constable; or

(b) a police custody and security officer acting on the direction of a constable;

"misuse" has the same meaning as in the Misuse of Drugs Act 1971 (c. 38);

"relevant Class A drug" means any of the following substances, preparations and products—

(a) cocaine or its salts;

(b) any preparation or other product containing cocaine or its salts;

(c) diamorphine or its salts;

(d) any preparation or other product containing diamorphine or its salts;

"relevant offence" means any of the following offences—

(a) theft;

(b) assault;

(c) robbery;

(d) fraud;

(e) reset;

(f) uttering a forged document;

(g) embezzlement;

(h) an attempt, conspiracy or incitement to commit an offence mentioned in paragraphs (a) to (g);

(i) an offence under section 4 of the Misuse of Drugs Act 1971 (c. 38) (restriction on production and supply of controlled drugs) committed in respect of a relevant Class A drug;

(j) an offence under section 5(2) of that Act of 1971 (possession of controlled drug) committed in respect of a relevant Class A drug;

(k) an offence under section 5(3) of that Act of 1971 (possession of controlled drug with intent to supply) committed in respect of a relevant Class A drug;

"senior police officer" means a police officer of a rank no lower than inspector.

20B Section 20A: supplementary

(1) Section 20A of this Act does not prejudice the generality of section 18 of this Act.

(2) Each person carrying out a function under section 20A of this Act must have regard to any guidance issued by the Scottish Ministers—

(a) about the carrying out of the function; or

(b) about matters connected to the carrying out of the function.

(3) An order under section 20A(3)(c) shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) An authorisation for the purposes of section 20A of this Act may be given orally or in writing but, if given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable.

(5) If a sample is provided or taken under section 20A of this Act by virtue of an authorisation, the authorisation and the grounds for the suspicion are to be recorded in writing as soon as is reasonably practicable after the sample is provided or taken.

(6) A person guilty of an offence under section 20A of this Act shall be liable on summary conviction to the following penalties—

(a) a fine not exceeding level 4 on the standard scale;

(b) imprisonment for a period—

(i) where conviction is in the district court, not exceeding 60 days; or

(ii) where conviction is in the sheriff court, not exceeding 3 months; or

(c) both such fine and imprisonment.

(7) Subject to subsection (8) below, a sample provided or taken under section 20A of this Act shall be destroyed as soon as possible following its analysis for the purpose for which it was taken.

(8) Where an analysis of the sample reveals that a relevant Class A drug is present in the person's body, the sample may be retained so that it can be used, and supplied to others, for the purpose of any proceedings against the person for an offence under section 88 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10); but—

(a) the sample may not be used, or supplied, for any other purpose; and

(b) the sample shall be destroyed as soon as possible once it is no longer capable of being used for that purpose.

(9) Information derived from a sample provided by or taken from a person under section 20A of this Act may be used and disclosed only for the following purposes—

(a) for the purpose of proceedings against the person for an offence under section 88 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10);

(b) for the purpose of informing any decision about granting bail in any criminal proceedings to the person;

(c) for the purpose of informing any decision of a children's hearing arranged to consider the person's case;

(d) where the person is convicted of an offence, for the purpose of informing any decision about the appropriate sentence to be passed by a court and any decision about the person's supervision or release;

(e) for the purpose of ensuring that appropriate advice and treatment is made available to the person.

(10) Subject to subsection (11) below, the Scottish Ministers may by order made by statutory instrument modify section 20A(8) of this Act for either of the following purposes—

(a) for the purpose of adding an offence to or removing an offence from those for the time being listed in the definition of "relevant offence";

(b) for the purpose of adding a substance, preparation or product to or removing a substance, preparation or product from those for the time being listed in the definition of "relevant Class A drug".

(11) An order under subsection (10)(b) may add a substance, preparation or product only if it is a Class A drug (that expression having the same meaning as in the Misuse of Drugs Act 1971 (c. 38)).

(12) An order under subsection (10) above shall not be made unless a draft of the statutory instrument containing it has been laid before and approved by resolution of the Scottish Parliament.**]**

Schedule 1 offences

21 Schedule 1 offences: power of constable to take offender into custody.

(1) Without prejudice to any other powers of arrest, a 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 had reason to believe to have committed, any of the offences mentioned in that Schedule, 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 a person has been arrested under this section, the officer in charge of a police station may—

(a) liberate him upon a written undertaking, signed by him and certified by the said officer, in terms of which that person undertakes to appear at a specified court at a specified time; or

(b) liberate him without any such undertaking; or

(c) refuse to liberate him, and such refusal and the detention of that person until his case is tried in the usual form shall not subject the officer to any claim whatsoever.

(3) A person in breach of an undertaking given by him under subsection (2)(a) above without reasonable excuse shall be guilty of an offence and liable to the following penalties—

(a) a fine not exceeding level 3 on the standard scale; and

(b) imprisonment for a period—

(i) where conviction is in the district court, not exceeding 60 days; or

(ii) in any other case, not exceeding 3 months.

(4) The penalties provided for in subsection (3) above may be imposed in addition to any other penalty which it is competent for the court to impose, notwithstanding that the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.

(5) In any proceedings relating to an offence under this section, a writing, purporting to be such an undertaking as is mentioned in subsection (2)(a) above and bearing to be signed and certified, shall be sufficient evidence of the terms of the undertaking given by the arrested person.

Police liberation

22 Liberation by police.

(1) Where a person has been arrested and charged with an offence which may be tried summarily, the officer in charge of a police station may—

(a) liberate him upon a written undertaking, signed by him and certified by the officer, in terms of which the person undertakes to appear at a specified court at a specified time; or

(b) liberate him without any such undertaking; or

(c) refuse to liberate him.

(2) A person in breach of an undertaking given by him under subsection (1) above without reasonable excuse shall be guilty of an offence and liable on summary conviction to the following penalties—

(a) a fine not exceeding level 3 on the standard scale; and

(b) imprisonment for a period—

(i) where conviction is in the district court, not exceeding 60 days; or

(ii) where conviction is in the sheriff court, not exceeding 3 months.

(3) The refusal of the officer in charge to liberate a person under subsection (1)(c) above and the detention of that person until his case is tried in the usual form shall not subject the officer to any claim whatsoever.

(4) The penalties provided for in subsection (2) above may be imposed in addition to any other penalty which it is competent for the court to impose, notwithstanding that the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.

(5) In any proceedings relating to an offence under this section, a writing, purporting to be such an undertaking as is mentioned in subsection (1)(a) above and bearing to be signed and certified, shall be sufficient evidence of the terms of the undertaking given by the arrested person.

Modifications etc. (not altering text)

C4 S. 22(1) excluded (19.2.2001) by 2000 c. 11, ss. 41, 53, Sch. 7 para. 6, **Sch. 8 para. 27(5)**; S.I. 2001/421, **art. 2**

VALID FROM 28/03/2011

[F27 22ZA Offences where undertaking breached

(1) A person who without reasonable excuse breaches an undertaking given by the person under section 22—

(a) by reason of failing to appear at court as required under subsection (1C)(a) of section 22, or

(b) by reason of failing to comply with a condition imposed under subsection (1D) of that section,

is guilty of an offence.

(2) A person who is guilty of an offence under subsection (1) is liable on summary conviction to—

(a) a fine not exceeding level 3 on the standard scale, and

(b) imprisonment for a period—

(i) where conviction is in the JP court, not exceeding 60 days,

(ii) where conviction is in the sheriff court, not exceeding 12 months.

(3) Despite subsection (1)(b), where (and to the extent that) the person breaches the undertaking by reason of committing an offence while subject to the undertaking—

(a) the person is not guilty of an offence under that subsection, and

(b) subsection (4) applies instead.

(4) The court, in determining the sentence for the subsequent offence, must have regard to—

(a) the fact that the subsequent offence was committed in breach of the undertaking,

(b) the number of undertakings to which the person was subject when that offence was committed,

(c) any previous conviction of the person of an offence under subsection (1)(b),

(d) the extent to which the sentence or disposal in respect of any previous conviction differed, by virtue of this subsection, from that which the court would have imposed but for this subsection.

(5) The reference in subsection (4)(c) to any previous conviction of an offence under subsection (1)(b) includes any previous conviction by a court in England and Wales, Northern Ireland or a member State of the European Union other than the United Kingdom of an offence that is equivalent to an offence under subsection (1)(b).

(6) The references in subsection (4)(d) to subsection (4) are to be read, in relation to a previous conviction by a court referred to in subsection (5), as references to any provision that is equivalent to subsection (4).

(7) Any issue of equivalence arising in pursuance of subsection (5) or (6) is for the court to determine.

(8) Subsections (3)(b) and (4) apply only if the fact that the subsequent offence was committed while the person was subject to an undertaking is specified in the complaint or indictment.

(9) In this section and section 22ZB, "the subsequent offence" is the offence committed by a person while the person is subject to an undertaking.

Textual Amendments

F27 Ss. 22ZA, 22ZB inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 55**, 206(1)

VALID FROM 28/03/2011

22ZB Evidential and procedural provision

(1) In any proceedings in relation to an offence under section 22ZA(1), the fact that a person—

(a) breached an undertaking given by the person under section 22 by reason of failing to appear at court as required under subsection (1C)(a) of that section, or

(b) was subject to any particular condition imposed under subsection (1D) of that section,

is, unless challenged by preliminary objection before the person's plea is recorded, to be held as admitted.

(2) In any proceedings in relation to an offence under section 22ZA(1) or (as the case may be) the subsequent offence—

(a) something in writing, purporting to be an undertaking given by a person under section 22 (and bearing to be signed and certified), is sufficient evidence of the terms of the undertaking so given,

(b) a document purporting to be a notice (or copy of a notice) effected under subsection (1F) of that section is sufficient evidence of the terms of the notice,

(c) an undertaking whose terms are modified under paragraph (b) of that subsection is to be regarded as if given in the terms as so modified.

(3) The fact that the subsequent offence was committed while the person was subject to an undertaking is to be held as admitted, unless challenged—

(a) in summary proceedings, by preliminary objection before the person's plea is recorded, or

(b) in the case of proceedings on indictment, by giving notice of a preliminary objection in accordance with section 71(2) or 72(6)(b)(i) of this Act.

(4) Where the maximum penalty in respect of the subsequent offence is specified by (or by virtue of) any enactment, that maximum penalty is, for the purposes of the court's determination of the appropriate sentence or disposal in respect of that offence, increased—

(a) where it is a fine, by the amount equivalent to level 3 on the standard scale, and

(b) where it is a period of imprisonment—

(i) as respects conviction in the JP court, by 60 days,

(ii) as respects conviction in the sheriff court or the High Court, by 6 months,

even if the maximum penalty as so increased exceeds the penalty which it would otherwise be competent for the court to impose.

(5) A penalty under section 22ZA(2) may be imposed in addition to any other penalty which it is competent for the court to impose even if the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.

(6) The reference in subsection (5) to a penalty being imposed in addition to another penalty means, in the case of sentences of imprisonment or detention—

(a) where the sentences are imposed at the same time (whether or not in relation to the same complaint), framing the sentences so that they have effect consecutively,

(b) where the sentences are imposed at different times, framing the sentence imposed later so that (if the earlier sentence has not been served) the later sentence has effect consecutive to the earlier sentence.

(7) Subsection (6)(b) is subject to section 204A of this Act.

(8) The court must state—

(a) where the sentence or disposal in respect of the subsequent offence is different from that which the court would have imposed but for section 22ZA(4), the extent of and the reasons for that difference, or

(b) otherwise, the reasons for there being no such difference.

(9) A court which finds a person guilty of an offence under section 22ZA(1) may remit that person for sentence in respect of that offence to any court which is considering the original offence.

(10) At any time before the trial of an accused in summary proceedings for the original offence, it is competent to amend the complaint to include an additional charge of an offence under section 22ZA(1).

(11) In this section, "the original offence" is the offence in relation to which an undertaking is given.**]**

Textual Amendments

F27 Ss. 22ZA, 22ZB inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 55**, 206(1)

PART III

BAIL

VALID FROM 09/08/2000

[F28 22A Consideration of bail on first appearance

(1) On the first occasion on which—

(a) a person accused on petition is brought before the sheriff prior to committal until liberated in due course of law; or

(b) a person charged on complaint with an offence is brought before a judge having jurisdiction to try the offence,

the sheriff or, as the case may be, the judge shall, after giving that person and the prosecutor an opportunity to be heard and within the period specified in subsection (2) below, either admit or refuse to admit that person to bail.

(2) That period is the period of 24 hours beginning with the time when the person accused or charged is brought before the sheriff or judge.

(3) If, by the end of that period, the sheriff or judge has not admitted or refused to admit the person accused or charged to bail, then that person shall be forthwith liberated.

(4) This section applies whether or not the person accused or charged is in custody when that person is brought before the sheriff or judge.**]**

Textual Amendments

F28 S. 22A inserted before s. 23 (9.8.2000) by 2000 asp 9, **s. 1**

23 Bail applications.

(1) Any person accused on petition of a crime which is by law bailable shall be entitled immediately, on any occasion on which he is brought before the sheriff prior to his committal until liberated in due course of law, to apply to the sheriff for bail, and the prosecutor shall be entitled to be heard against any such application.

(2) The sheriff shall be entitled in his discretion to refuse such application before the person accused is committed until liberated in due course of law.

(3) Where an accused is admitted to bail without being committed until liberated in due course of law, it shall not be necessary so to commit him, and it shall be lawful to serve him with an indictment or complaint without his having been previously so committed.

(4) Where bail is refused before committal until liberation in due course of law on an application under subsection (1) above, the application for bail may be renewed after such committal.

(5) Any sheriff having jurisdiction to try the offence or to commit the accused until liberated in due course of law may, at his discretion, on the application of any person who has been committed until liberation in due course of law for any crime or offence, except murder or treason, and having given the prosecutor an opportunity to be heard, admit or refuse to admit the person to bail.

(6) Where a person is charged on complaint with an offence, any judge having jurisdiction to try the offence may, at his discretion, on the application of the accused and after giving the prosecutor an opportunity to be heard, admit or refuse to admit the accused to bail.

(7) An application under subsection (5) or (6) above shall be disposed of within 24 hours after its presentation to the judge, failing which the accused shall be forthwith liberated.

(8) This section applies whether or not the accused is in custody at the time he appears for disposal of his application.

VALID FROM 09/08/2000

[F29 23A Bail and liberation where person already in custody

(1) A person may be admitted to bail under section 22A or 23 of this Act although in custody—

(a) having been refused bail in respect of another crime or offence; or

(b) serving a sentence of imprisonment.

(2) A decision to admit a person to bail by virtue of subsection (1) above does not liberate the person from the custody mentioned in that subsection.

(3) The liberation under section 22A(3) or 23(7) of this Act of a person who may be admitted to bail by virtue of subsection (1) above does not liberate that person from the custody mentioned in that subsection.

(4) In subsection (1) above, "another crime or offence" means a crime or offence other than that giving rise to the consideration of bail under section 22A or 23 of this Act.**]**

Textual Amendments

F29 S. 23A inserted (9.8.2000) by 2000 asp 9, **s. 2**

VALID FROM 10/12/2007

[F30 23B Entitlement to bail and the court's function

(1) Bail is to be granted to an accused person—

(a) except where—

(i) by reference to section 23C of this Act; and

(ii) having regard to the public interest,

there is good reason for refusing bail;

(b) subject to section 23D of this Act.

(2) In determining a question of bail in accordance with subsection (1) above, the court is to consider the extent to which the public interest could, if bail were granted, be safeguarded by the imposition of bail conditions.

(3) Reference in subsections (1)(a)(ii) and (2) above to the public interest includes (without prejudice to the generality of the public interest) reference to the interests of public safety.

(4) The court must (without prejudice to any other right of the parties to be heard) give the prosecutor and the accused person an opportunity to make submissions in relation to a question of bail.

(5) The attitude of the prosecutor towards a question of bail (including as to bail conditions) does not restrict the court's exercise of its discretion in determining the question in accordance with subsection (1) above.

(6) For the purpose of so determining a question of bail (including as to bail conditions), the court may request the prosecutor or the accused person's solicitor or counsel to provide it with information relevant to the question.

(7) However, whether that party gives the court opinion as to any risk of something occurring (or any likelihood of something not occurring) is a matter for that party to decide.

Textual Amendments

F30 Ss. 23B-23D inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 1**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

VALID FROM 10/12/2007

[F30 23C Grounds relevant as to question of bail

(1) In any proceedings in which a person is accused of an offence, the following are grounds on which it may be determined that there is good reason for refusing bail—

(a) any substantial risk that the person might if granted bail—

(i) abscond; or

(ii) fail to appear at a diet of the court as required;

(b) any substantial risk of the person committing further offences if granted bail;

(c) any substantial risk that the person might if granted bail—

(i) interfere with witnesses; or

(ii) otherwise obstruct the course of justice,

in relation to himself or any other person;

(d) any other substantial factor which appears to the court to justify keeping the person in custody.

(2) In assessing the grounds specified in subsection (1) above, the court must have regard to all material considerations including (in so far as relevant in the circumstances of the case) the following examples—

(a) the—

(i) nature (including level of seriousness) of the offences before the court;

(ii) probable disposal of the case if the person were convicted of the offences;

(b) whether the person was subject to a bail order when the offences are alleged to have been committed;

(c) whether the offences before the court are alleged to have been committed—

(i) while the person was subject to another court order;

(ii) while the person was on release on licence or parole;

(iii) during a period for which sentence of the person was deferred;

(d) the character and antecedents of the person, in particular—

(i) the nature of any previous convictions of the person (including convictions outwith Scotland);

(ii) whether the person has previously contravened a bail order or other court order (by committing an offence or otherwise);

(iii) whether the person has previously breached the terms of any release on licence or parole (by committing an offence or otherwise);

(iv) whether the person is serving or recently has served a sentence of imprisonment in connection with a matter referred to in sub-paragraphs (i) to (iii) above;

(e) the associations and community ties of the person.**]**

Textual Amendments

F30 Ss. 23B-23D inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 1**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

VALID FROM 10/12/2007

23D Restriction on bail in certain solemn cases

(1) Where subsection (2) or (3) below applies, a person is to be granted bail in solemn proceedings only if there are exceptional circumstances justifying bail.

(2) This subsection applies where the person—

(a) is accused in the proceedings of a violent or sexual offence; and

(b) has a previous conviction on indictment for a violent or sexual offence.

(3) This subsection applies where the person—

(a) is accused in the proceedings of a drug trafficking offence; and

(b) has a previous conviction on indictment for a drug trafficking offence.

(4) For the purposes of this section—

"drug trafficking offence" has the meaning given by section 49(5) of the Proceeds of Crime (Scotland) Act 1995 (c. 43);

"sexual offence" has the meaning given by section 210A(10) and (11) of this Act;

"violent offence" means any offence (other than a sexual offence) inferring personal violence.

(5) Any reference in this section to a conviction on indictment for a violent or sexual offence or a drug trafficking offence includes—

(a) a conviction on indictment in England and Wales or Northern Ireland for an equivalent offence;

(b) a conviction in a member State of the European Union (other than the United Kingdom) which is equivalent to conviction on indictment for an equivalent offence.

(6) Any issue of equivalence arising in pursuance of subsection (5) above is for the court to determine.

(7) This section is without prejudice to section 23C of this Act.**]**

Textual Amendments

F30 Ss. 23B-23D inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 1**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

24 Bail and bail conditions.

(1) All crimes and offences except, subject to subsection (2) below, murder and treason are bailable.

(2) Nothing in this Act shall affect the right of the Lord Advocate or the High Court to admit to bail any person charged with any crime or offence.

(3) It shall not be lawful to grant bail or release for a pledge or deposit of money, and—

(a) release on bail may be granted only on conditions which subject to subsection (6) below, shall not include a pledge or deposit of money;

(b) liberation may be granted by the police under section 21, 22 or 43 of this Act.

(4) In granting bail the court or, as the case may be, the Lord Advocate shall impose on the accused—

(a) the standard conditions; and

(b) such further conditions as the court or, as the case may be, the Lord Advocate considers necessary to secure—

(i) that the standard conditions are observed; and

(ii) that the accused makes himself available for the purpose of participating in an identification parade or of enabling any print, impression or sample to be taken from him.

(5) The standard conditions referred to in subsection (4) above are conditions that the accused—

(a) appears at the appointed time at every diet relating to the offence with which he is charged of which he is given due notice;

(b) does not commit an offence while on bail;

(c) does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person; and

(d) makes himself available for the purpose of enabling enquiries or a report to be made to assist the court in dealing with him for the offence with which he is charged.

(6) The court or, as the case may be, the Lord Advocate may impose as one of the conditions of release on bail a requirement that the accused or a cautioner on his behalf deposits a sum of money in court, but only where the court or, as the case may be, the Lord Advocate is satisfied that the imposition of such condition is appropriate to the special circumstances of the case.

(7) In any enactment, including this Act and any enactment passed after this Act—

(a) any reference to bail shall be construed as a reference to release on conditions in accordance with this Act or to conditions imposed on bail, as the context requires;

(b) any reference to an amount of bail fixed shall be construed as a reference to conditions, including a sum required to be deposited under subsection (6) above;

(c) any reference to finding bail or finding sufficient bail shall be construed as a reference to acceptance of conditions imposed or the finding of a sum required to be deposited under subsection (6) above.

(8) In this section and sections 25 and 27 to 29 of this Act, references to an accused and to appearance at a diet shall include references respectively to an appellant and to appearance at the court on the day fixed for the hearing of an appeal.

VALID FROM 04/10/2004

24B Regulations as to power to impose remote monitoring requirements under section 24A

(1) The Scottish Ministers may by regulations prescribe—

(a) which courts, or description or descriptions of courts, may impose remote monitoring requirements under section 24A(1) or (2) of this Act;

(b) what method or methods of monitoring compliance with a movement restriction condition may be specified in any such requirement by any such court; and

(c) the description or descriptions of persons in respect of whom such requirements may be imposed.

(2) Regulations under subsection (1) above may make different provision in relation to the matters mentioned in paragraphs (b) and (c) of that subsection in relation to different courts or descriptions of courts.

(3) Without prejudice to the generality of subsection (1) above, in relation to district courts, regulations under that subsection may make provision as respects such courts by reference to whether the court is constituted by a stipendiary magistrate or by one or more justices.

(4) Regulations under subsection (1) above may make such transitional and consequential provisions, including provision in relation to the continuing effect of any remote monitoring requirements imposed under section 24A(1) or (2) in force when new regulations are made, as the Scottish Ministers consider appropriate.

(5) Regulations under subsection (1) above shall be made by statutory instrument and a statutory instrument containing any such regulations (other than the first such regulations) shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(6) The first regulations under subsection (1) above shall not be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Parliament.

VALID FROM 04/10/2004

24C Monitoring of compliance in pursuance of requirements imposed under section 24A

(1) Where the Scottish Ministers, in regulations under section 24B(1) of this Act, empower a court or a description of court to impose remote monitoring requirements under section 24A(1) or (2) of this Act they shall notify the court or, as the case may be, each court of that description of the person or description of persons who may be designated by that court for the purpose of monitoring the compliance with any movement restriction condition of the person in respect of whom the requirement is imposed.

(2) A court which imposes a remote monitoring requirement under section 24A(1) or (2) of this Act shall include provisions in the requirement for making a person notified by the Scottish Ministers under subsection (1) above or a description of persons so notified responsible for monitoring the compliance of the person in respect of whom it is imposed with the movement restriction condition in respect of which it is imposed.

(3) Where the Scottish Ministers change the person or description of persons notified by them under subsection (1) above, any court which has imposed a remote monitoring requirement under 24A(1) or (2) of this Act shall, if necessary, vary the requirement accordingly and shall notify the variation to the person in respect of whom the order was made.

VALID FROM 04/10/2004

24D Remote monitoring

(1) The Scottish Ministers may make such arrangements, including contractual arrangements, as they consider appropriate with such persons, whether legal or natural, as they think fit for the remote monitoring, in pursuance of remote monitoring requirements imposed under section 24A(1) or (2), of the compliance of persons in respect of whom such requirements are imposed with the movement restriction conditions in respect of which they are imposed.

(2) Different arrangements may be made under subsection (1) above in relation to different areas or different forms of remote monitoring.

(3) A court imposing a remote monitoring requirement under section 24A(1) or (2) of this Act shall include in the requirement, as a further condition of bail, a requirement that the person in respect of whom it is imposed—

(a) shall, either continuously or for such periods as may be specified, wear or carry a device for the purpose of enabling the remote monitoring of his compliance with the movement restriction condition in respect of which it is imposed to be carried out; and

(b) shall not tamper with or intentionally damage the device or knowingly allow it to be tampered with or intentionally damaged.

(4) The Scottish Ministers shall by regulations specify devices which may be used for the purpose of remotely monitoring the compliance of persons in respect of whom remote monitoring requirements have been imposed under section 24A(1) or (2) of this Act with the movement restriction conditions in respect of which they are imposed.

(5) Regulations under subsection (4) above shall be made by statutory instrument and a statutory instrument containing such regulations shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

VALID FROM 04/10/2004

24E Documentary evidence in proceedings for breach of bail conditions being remotely monitored

(1) This section applies in proceedings against a person (referred to in this section as "the accused") for an offence under subsection (1)(b) of section 27 of this Act (failure to comply with a condition imposed on bail) where the condition referred to in that subsection is—

(a) a movement restriction condition in respect of which a remote monitoring requirement has been imposed under section 24A(1) or (2); or

(b) a requirement imposed under section 24D(3)(b) of this Act.

(2) Evidence of—

(a) in the case referred to in subsection (1)(a) above, the presence or absence of the accused at a particular place at a particular time; or

(b) in the case referred to in subsection (1)(b) above, any tampering with or damage to a device worn or carried by the accused for the purpose of remotely monitoring his whereabouts,

may, subject to subsections (5) and (6) below, be given by the production of the document or documents referred to in subsection (3) below.

(3) That document or those documents is or are a document or documents bearing to be—

(a) a statement automatically produced by a device specified in regulations made under section 24D(4) of this Act, by which the accused's whereabouts were remotely monitored; and

(b) a certificate signed by a person nominated for the purpose of this paragraph by the Scottish Ministers that the statement relates to—

(i) in the case referred to in subsection (1)(a) above, the whereabouts of the accused at the dates and times shown in the statement; or

(ii) in the case referred to in subsection (1)(b) above, any tampering with or damage to the device.

(4) The statement and certificate mentioned in subsection (3) above shall, when produced in the proceedings, be sufficient evidence of the facts set out in them.

(5) Neither the statement nor the certificate mentioned in subsection (3) above shall be admissible in evidence unless a copy of both has been served on the accused prior to the trial.

(6) Without prejudice to subsection (5) above, where it appears to the court that the accused has had insufficient notice of the statement or certificate, it may adjourn the trial or make an order which it thinks appropriate in the circumstances.

VALID FROM 01/01/2004

[F31 24A Bail: extradition proceedings

(1) In the application of the provisions of this Part by virtue of section 9(2) or 77(2) of the Extradition Act 2003 (judge's powers at extradition hearing), those provisions apply with the modifications that—

(a) references to the prosecutor are to be read as references to a person acting on behalf of the territory to which extradition is sought;

(b) the right of the Lord Advocate mentioned in section 24(2) of this Act applies to a person subject to extradition proceedings as it applies to a person charged with any crime or offence;

(c) the following do not apply—

(i) paragraph (b) of section 24(3); and

(ii) subsection (3) of section 30; and

(d) sections 28(1) and 33 apply to a person subject to extradition proceedings as they apply to an accused.

(2) Section 32 of this Act applies in relation to a refusal of bail, the amount of bail or a decision to allow bail or ordain appearance in proceedings under this Part as the Part applies by virtue of the sections of that Act of 2003 mentioned in subsection (1) above.

(3) The Scottish Ministers may, by order, for the purposes of section 9(2) or 77(2) of the Extradition Act 2003 make such amendments to this Part as they consider necessary or expedient.

(4) The order making power in subsection (3) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.**]**

Textual Amendments

F31 S. 24A inserted (1.1.2004) by Extradition Act 2003 (c. 41), **ss. 199**, 221; S.I. 2003/3103, **art. 2** (subject to arts. 3-5)

25 Bail conditions: supplementary.

(1) The court shall specify in the order granting bail, a copy of which shall be given to the accused—

(a) the conditions imposed; and

(b) an address, within the United Kingdom (being the accused's normal place of residence or such other place as the court may, on cause shown, direct) which, subject to subsection (2) below, shall be his proper domicile of citation.

(2) The court may on application in writing by the accused while he is on bail alter the address specified in the order granting bail, and this new address shall, as from such date as the court may direct, become his proper domicile of citation; and the court shall notify the accused of its decision on any application under this subsection.

(3) In this section "proper domicile of citation" means the address at which the accused may be cited to appear at any diet relating to the offence with which he is charged or an offence charged in the same proceedings as that offence or to which any other intimation or document may be sent; and any citation at or the sending of an intimation or document to the proper domicile of citation shall be presumed to have been duly carried out.

VALID FROM 01/02/2005

[F32 25A Failure to accept conditions of bail under section 65(8C): continued detention of accused

An accused who—

(a) is, by virtue of subsection (4) of section 65 of this Act, entitled to be admitted to bail; but

(b) fails to accept any of the conditions imposed by the court on bail under subsection (8C) of that section,

shall continue to be detained under the committal warrant for so long as he fails to accept any of those conditions.**]**

Textual Amendments

F32 S. 25A inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 7**; S.S.I. 2004/405, **art. 2** Sch. 1 (subject to arts. 3-5)

26 Bail: circumstances where not available.

(1) Notwithstanding sections 23, 24 (except subsection (2)), 30, 32, 33 and 112 of this Act, a person who in any proceedings has been charged with or convicted of—

(a) attempted murder;

(b) culpable homicide;

(c) rape; or

(d) attempted rape,

in circumstances where this section applies shall not be granted bail in those proceedings.

(2) This section applies where—

(a) the person has previously been convicted by or before a court in any part of the United Kingdom of any offence specified in subsection (1) above or of murder or manslaughter; and

(b) in the case of a previous conviction of culpable homicide or of manslaughter—

(i) he was sentenced to imprisonment or, if he was then a child or young person, to detention under any of the relevant enactments;

(ii) a hospital order was imposed in respect of him;

(iii) an order having the same effect as a hospital order was made in respect of him under section 57(2)(a) of this Act; or

(iv) an order having equivalent effect to an order referred to in sub-paragraph (ii) or (iii) above has been made in respect of him by a court in England and Wales.

(3) This section applies whether or not an appeal is pending against conviction or sentence or both.

(4) In this section—

"conviction" includes—

(a) a finding that a person is not guilty by reason of insanity;

(b) a finding under section 55(2) of this Act;

(c) a finding under section 4A(3) of the [M15]Criminal Procedure (Insanity) Act 1964 (cases of unfitness to plead) that a person did the act or made the omission charged against him; and

(d) a conviction of an offence for which an order is made placing the offender on probation or discharging him absolutely or conditionally;

and "convicted" shall be construed accordingly; and

"the relevant enactments" means—

(a) as respects Scotland, sections 205(1) to (3) and 208 of this Act;

(b) as respects England and Wales, section 53(2) of the [M16]Children and Young Persons Act 1933; and

(c) as respects Northern Ireland, section 73(2) of the [M17]Children and Young Persons Act (Northern Ireland) 1968.

Marginal Citations

M15 1964 c.84.
M16 1933 c.12.
M17 1968 c.34 (N.I.)

27 Breach of bail conditions: offences.

(1) Subject to subsection (7) below, an accused who having been granted bail fails without reasonable excuse—

(a) to appear at the time and place appointed for any diet of which he has been given due notice; or

(b) to comply with any other condition imposed on bail,

shall, subject to subsection (3) below, be guilty of an offence and liable on conviction to the penalties specified in subsection (2) below.

(2) The penalties mentioned in subsection (1) above are—

(a) a fine not exceeding level 3 on the standard scale; and

(b) imprisonment for a period—

(i) where conviction is in the district court, not exceeding 60 days; or

(ii) in any other case, not exceeding 3 months.

(3) Where, and to the extent that, the failure referred to in subsection (1)(b) above consists in the accused having committed an offence while on bail (in this section referred to as "the subsequent offence"), he shall not be guilty of an offence under that subsection but, subject to subsection (4) below, the court which sentences him for the subsequent offence shall, in determining the appropriate sentence or disposal for that offence, have regard to—

(a) the fact that the offence was committed by him while on bail and the number of bail orders to which he was subject when the offence was committed;

(b) any previous conviction of the accused of an offence under subsection (1)(b) above; and

(c) the extent to which the sentence or disposal in respect of any previous conviction of the accused differed, by virtue of this subsection, from that which the court would have imposed but for this subsection.

(4) The court shall not, under subsection (3) above, have regard to the fact that the subsequent offence was committed while the accused was on bail unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.

[[F33](4A) The fact that the subsequent offence was committed while the accused was on bail shall, unless challenged—

(a) in the case of proceedings on indictment, by giving notice of a preliminary objection under paragraph (b) of section 72(1) of this Act or under that paragraph as applied by section 71(2) of this Act; or

(b) in summary proceedings, by preliminary objection before his plea is recorded,

be held as admitted.**]**

(5) Where the maximum penalty in respect of the subsequent offence is specified by or by virtue of any enactment, that maximum penalty shall, for the purposes of the court's determination, by virtue of subsection (3) above, of the appropriate sentence or disposal in respect of that offence, be increased—

(a) where it is a fine, by the amount for the time being equivalent to level 3 on the standard scale; and

(b) where it is a period of imprisonment—

(i) as respects a conviction in the High Court or the sheriff court, by 6 months; and

(ii) as respects a conviction in the district court, by 60 days,

notwithstanding that the maximum penalty as so increased exceeds the penalty which it would otherwise be competent for the court to impose.

(6) Where the sentence or disposal in respect of the subsequent offence is, by virtue of subsection (3) above, different from that which the court would have imposed but for that subsection, the court shall state the extent of and the reasons for that difference.

(7) An accused who having been granted bail in relation to solemn proceedings fails without reasonable excuse to appear at the time and place appointed for any diet of which he has been given due notice (where such diet is in respect of solemn proceedings) shall be guilty of an offence and liable on conviction on indictment to the following penalties—

(a) a fine; and

(b) imprisonment for a period not exceeding 2 years.

(8) At any time before the trial of an accused under solemn procedure for the original offence, it shall be competent—

(a) to amend the indictment to include an additional charge of an offence under this section;

(b) to include in the list of witnesses or productions relating to the original offence, witnesses or productions relating to the offence under this section.

(9) The penalties provided for in subsection (2) above may be imposed in addition to any other penalty which it is competent for the court to impose, notwithstanding that the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.

(10) A court which finds an accused guilty of an offence under this section may remit the accused for sentence in respect of that offence to any court which is considering the original offence.

(11) In this section "the original offence" means the offence with which the accused was charged when he was granted bail or an offence charged in the same proceedings as that offence.

Textual Amendments

F33 S. 27(4A) inserted (4.7.1996) by 1996 c. 25, **s. 73(2)**

28 Breach of bail conditions: arrest of offender, etc.

(1) A constable may arrest without warrant an accused who has been released on bail where the constable has reasonable grounds for suspecting that the accused has broken, is breaking, or is likely to break any condition imposed on his bail.

(2) An accused who is arrested under this section shall wherever practicable be brought before the court to which his application for bail was first made not later than in the course of the first day after his arrest, such day not being, subject to subsection (3) below, a Saturday, a Sunday or a court holiday prescribed for that court under section 8 of this Act.

(3) Nothing in subsection (2) above shall prevent an accused being brought before a court on a Saturday, a Sunday or such a court holiday where the court is, in pursuance of the said section 8, sitting on such day for the disposal of criminal business.

(4) Where an accused is brought before a court under subsection (2) or (3) above, the court, after hearing the parties, may—

(a) recall the order granting bail;

(b) release the accused under the original order granting bail; or

(c) vary the order granting bail so as to contain such conditions as the court thinks it necessary to impose to secure that the accused complies with the requirements of paragraphs (a) to (d) of section 24(5) of this Act.

(5) The same rights of appeal shall be available against any decision of the court under subsection (4) above as were available against the original order of the court relating to bail.

(6) For the purposes of this section and section 27 of this Act, an extract from the minute of proceedings, containing the order granting bail and bearing to be signed by the clerk of court, shall be sufficient evidence of the making of that order and of its terms and of the acceptance by the accused of the conditions imposed under section 24 of this Act.

29 Bail: monetary conditions.

(1) Without prejudice to section 27 of this Act, where the accused or a cautioner on his behalf has deposited a sum of money in court under section 24(6) of this Act, then—

(a) if the accused fails to appear at the time and place appointed for any diet of which he has been given due notice, the court may, on the motion of the prosecutor, immediately order forfeiture of the sum deposited;

(b) if the accused fails to comply with any other condition imposed on bail, the court may, on conviction of an offence under section 27(1)(b) of this Act and on the motion of the prosecutor, order forfeiture of the sum deposited.

(2) If the court is satisfied that it is reasonable in all the circumstances to do so, it may recall an order made under subsection (1)(a) above and direct that the money forfeited shall be refunded, and any decision of the court under this subsection shall be final and not subject to review.

(3) A cautioner, who has deposited a sum of money in court under section 24(6) of this Act, shall be entitled, subject to subsection (4) below, to recover the sum deposited at any diet of the court at which the accused appears personally.

(4) Where the accused has been charged with an offence under section 27(1)(b) of this Act, nothing in subsection (3) above shall entitle a cautioner to recover the sum deposited unless and until—

(a) the charge is not proceeded with; or

(b) the accused is acquitted of the charge; or

(c) on the accused's conviction of the offence, the court has determined not to order forfeiture of the sum deposited.

(5) The references in subsections (1)(b) and (4)(c) above to conviction of an offence shall include references to the making of an order in respect of the offence under section 246(3) of this Act.

30 Bail review.

(1) This section applies where a court has refused to admit a person to bail or, where a court has so admitted a person, the person has failed to accept the conditions imposed or that a sum required to be deposited under section 24(6) of this Act has not been so deposited.

(2) A court shall, on the application of any person mentioned in subsection (1) above, have power to review its decision to admit to bail or its decision as to the conditions imposed and may, on cause shown, admit the person to bail or, as the case may be, fix bail on different conditions.

(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 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 conditions imposed.

31 Bail review on prosecutor's application.

(1) On an application by the prosecutor at any time after a court has granted bail to a person the court may, where the prosecutor puts before the court material information which was not available to it when it granted bail to that person, review its decision.

(2) On receipt of an application under subsection (1) above the court shall—

(a) intimate the application to the person granted bail;

(b) fix a diet for hearing the application and cite that person to attend the diet; and

(c) where it considers that the interests of justice so require, grant warrant to arrest that person.

(3) On hearing an application under subsection (1) above the court may—

(a) withdraw the grant of bail and remand the person in question in custody; or

(b) grant bail, or continue the grant of bail, either on the same or on different conditions.

(4) Nothing in the foregoing provisions of this section shall affect any right of appeal against the decision of a court in relation to bail.

32 Bail appeal.

(1) Where an application for bail—

(a) after committal until liberation in due course of law; or

(b) by a person charged on complaint with an offence,

is refused or where the applicant is dissatisfied with the amount of bail fixed, he may appeal to the High Court which may, in its discretion order intimation to the Lord Advocate or, as the case may be, the prosecutor.

(2) Where, in any case, an application for bail is granted, or, in summary proceedings an accused is ordained to appear, the public prosecutor, if dissatisfied—

(a) with the decision allowing bail;

(b) with the amount of bail fixed; or

(c) in summary proceedings, that the accused has been ordained to appear,

may appeal to the High Court, and the applicant shall not be liberated, subject to subsection (7) below, until the appeal by the prosecutor is disposed of.

(3) Written notice of appeal shall be immediately given to the opposite party by a party appealing under this section.

(4) 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 parties as shall seem just.

(5) Where an applicant in an appeal under this section is under 21 years of age, section 51 of this Act shall apply to the High Court or, as the case may be, the Lord Commissioner of Justiciary when disposing of the appeal as it applies to a court when remanding or committing a person of the applicant's age for trial or sentence.

(6) In the event of the appeal of the public prosecutor under this section being refused, the court may award expenses against him.

(7) When an appeal is taken by the public prosecutor either against the grant of bail or against the amount fixed, the applicant to whom bail has been granted shall, if the bail fixed has been found by him, be liberated after 72 hours from the granting of the application, whether the appeal has been disposed of or not, unless the High Court grants an order for his further detention in custody.

(8) In computing the period mentioned in subsection (7) above, Sundays and public holidays, whether general or court holidays, shall be excluded.

(9) When an appeal is taken under this section by the prosecutor in summary proceedings against the fact that the accused has been ordained to appear, subsections (7) and (8) above shall apply as they apply in the case of an appeal against the granting of bail or the amount fixed.

(10) Notice to the governor of the prison of the issue of an order such as is mentioned in subsection (7) above within the time mentioned in that subsection bearing to be sent by the Clerk of Justiciary or the Crown Agent shall be sufficient warrant for the detention of the applicant pending arrival of the order in due course of post.

VALID FROM 10/12/2007

[F34 32A Bail after conviction: prosecutor's attitude

(1) Where—

(a) a person has been convicted in any proceedings of an offence; and

(b) a question of bail (including as to bail conditions) subsequently arises in the proceedings (whether before sentencing or pending appeal or otherwise),

the prosecutor and the convicted person must be given an opportunity to make submissions in relation to the question.

(2) But the attitude of the prosecutor towards the question does not restrict the court's exercise of its discretion in determining the question in accordance with the rules applying in the case.

(3) Despite subsection (1) above, the prosecutor need not be given an opportunity to make submissions in relation to a question of bail arising under section 245J of this Act.

(4) This section is without prejudice to any other right of the parties to be heard.**]**

Textual Amendments

F34 S. 32A inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 5**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

33 Bail: no fees exigible.

No clerks fees, court fees or other fees or expenses shall be exigible from or awarded against an accused in respect of his application for bail or of the appeal of such application to the High Court.

PART IV

PETITION PROCEDURE

Warrants

34 Petition for warrant.

(1) A petition for warrant to arrest and commit a person suspected of or charged with crime may be in the forms—

(a) set out in Schedule 2 to this Act; or

(b) prescribed by Act of Adjournal,

or as nearly as may be in such form; and Schedule 3 to this Act shall apply to any such petition as it applies to the indictment.

(2) If on the application of the procurator fiscal, a sheriff is satisfied that there is reasonable ground for suspecting that an offence has been or is being committed by a body corporate, the sheriff shall have the like power to grant warrant for the citation of witnesses and the production of documents and articles as he would have if a petition charging an individual with the commission of the offence were presented to him.

VALID FROM 10/03/2008

[F35 Petition proceedings outwith sheriffdom

Textual Amendments

F35 S. 34A and preceding cross-heading inserted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 31**, 84; S.S.I. 2008/42, **art. 3**, Sch.

34A Petition proceedings outwith sheriffdom

(1) Where the prosecutor believes—

(a) that, because of exceptional circumstances (and without an order under subsection (3) below), it is likely that there would be an unusually high number of accused persons appearing from custody for the first calling of cases on petition in the sheriff courts in the sheriffdom; and

(b) that it would not be practicable for those courts to deal with all the cases involved,

the prosecutor may apply to the sheriff principal for the order referred to in subsection (2) below.

(2) For the purposes of subsection (1) above, the order is for authority for petition proceedings against some or all of the accused persons to be—

(a) taken at a sheriff court in another sheriffdom; and

(b) maintained—

(i) there; or

(ii) at any of the sheriff courts referred to in subsection (1) above as may at the first calling of the case be appointed for further proceedings.

(3) On an application under subsection (1) above, the sheriff principal may make the order sought with the consent of the sheriff principal of the other sheriffdom.

(4) An order under subsection (3) above may be made by reference to a particular period or particular circumstances.

(5) This section does not confer jurisdiction for any subsequent proceedings on indictment.**]**

Judicial examination

35 Judicial examination.

(1) The accused's solicitor shall be entitled to be present at the examination.

(2) The sheriff may delay the examination for a period not exceeding 48 hours from and after the time of the accused's arrest, in order to allow time for the attendance of the solicitor.

(3) Where the accused is brought before the sheriff for examination on any charge and he or his solicitor intimates that he does not desire to emit a declaration in regard to such a charge, it shall be unnecessary to take a declaration, and, subject to section 36 of this Act, the accused may be committed for further examination or until liberated in due course of law without a declaration being taken.

(4) Nothing in subsection (3) above shall prejudice the right of the accused subsequently to emit a declaration on intimating to the prosecutor his desire to do so; and that declaration shall be taken in further examination.

(5) Where, subsequent to examination or further examination on any charge, the prosecutor desires to question the accused as regards an extrajudicial confession, whether or not a full admission, allegedly made by him to or in the hearing of a constable, which is relevant to the charge and as regards which he has not previously been examined, the accused may be brought before the sheriff for further examination.

(6) Where the accused is brought before the sheriff for further examination the sheriff may delay that examination for a period not exceeding 24 hours in order to allow time for the attendance of the accused's solicitor.

(7) Any proceedings before the sheriff in examination or further examination shall be conducted in chambers and outwith the presence of any co-accused.

(8) This section applies to procedure on petition, without prejudice to the accused being tried summarily by the sheriff for any offence in respect of which he has been committed until liberated in due course of law.

36 Judicial examination: questioning by prosecutor.

(1) Subject to the following provisions of this section, an accused on being brought before the sheriff for examination on any charge (whether the first or a further examination) may be questioned by the prosecutor in so far as such questioning is directed towards eliciting any admission, denial, explanation, justification or comment which the accused may have as regards anything to which subsections (2) to (4) below apply.

(2) This subsection applies to matters averred in the charge, and the particular aims of a line of questions under this subsection shall be to determine—

(a) whether any account which the accused can give ostensibly discloses a defence; and

(b) the nature and particulars of that defence.

(3) This subsection applies to the alleged making by the accused, to or in the hearing of a constable, of an extrajudicial confession (whether or not a full admission) relevant to the charge, and questions under this subsection may only be put if the accused has, before the examination, received from the prosecutor or from a constable a written record of the confession allegedly made.

(4) This subsection applies to what is said in any declaration emitted in regard to the charge by the accused at examination.

(5) The prosecutor shall, in framing questions in exercise of his power under subsection (1) above, have regard to the following principles—

(a) the question should not be designed to challenge the truth of anything said by the accused;

(b) there should be no reiteration of a question which the accused has refused to answer at the examination; and

(c) there should be no leading questions,

and the sheriff shall ensure that all questions are fairly put to, and understood by, the accused.

(6) The accused shall be told by the sheriff—

(a) where he is represented by a solicitor at the judicial examination, that he may consult that solicitor before answering any question; and

(b) that if he answers any question put to him at the examination under this section in such a way as to disclose an ostensible defence, the prosecutor shall be under the duty imposed by subsection (10) below.

(7) With the permission of the sheriff, the solicitor for the accused may ask the accused any question the purpose of which is to clarify any ambiguity in an answer given by the accused to the prosecutor at the examination or to give the accused an opportunity to answer any question which he has previously refused to answer.

(8) An accused may decline to answer a question under subsection (1) above; and, where he is subsequently tried on the charge mentioned in that subsection or on any other charge arising out of the circumstances which gave rise to the charge so mentioned, his having so declined may be commented upon by the prosecutor, the judge presiding at the trial, or any co-accused, only where and in so far as the accused (or any witness called on his behalf) in evidence avers something which could have been stated appropriately in answer to that question.

(9) The procedure in relation to examination under this section shall be prescribed by Act of Adjournal.

(10) Without prejudice to any rule of law, on the conclusion of an examination under this section the prosector shall secure the investigation, to such extent as is reasonably practicable, of any ostensible defence disclosed in the course of the examination.

(11) The duty imposed by subsection (10) above shall not apply as respects any ostensible defence which is not reasonably capable of being investigated.

37 Judicial examination: record of proceedings.

(1) The prosecutor shall provide for a verbatim record to be made by means of shorthand notes or by mechanical means of all questions to and answers and declarations by the accused in examination, or further examination, under sections 35 and 36 of this Act.

(2) A shorthand writer shall—

(a) sign the shorthand notes taken by him of the questions, answers and declarations mentioned in subsection (1) above and certify the notes as being complete and correct; and

(b) retain the notes.

(3) A person recording the questions, answers and declarations mentioned in subsection (1) above by mechanical means shall—

(a) certify that the record is true and complete;

(b) specify in the certificate the proceedings to which the record relates; and

(c) retain the record.

(4) The prosecutor shall require the person who made the record mentioned in subsection (1) above, or such other competent person as he may specify, to make a transcript of the record in legible form; and that person shall—

(a) comply with the requirement;

(b) certify the transcript as being a complete and correct transcript of the record purporting to have been made and certified, and in the case of shorthand notes signed, by the person who made the record; and

(c) send the transcript to the prosecutor.

(5) A transcript certified under subsection (4)(b) above shall, subject to section 38(1) of this Act, be deemed for all purposes to be a complete and correct record of the questions, answers and declarations mentioned in subsection (1) above.

(6) Subject to subsections (7) to (9) below, within 14 days of the date of examination or further examination, the prosecutor shall—

(a) serve a copy of the transcript on the accused examined; and

(b) serve a further such copy on the solicitor (if any) for that accused.

(7) Where at the time of further examination a trial diet is already fixed and the interval between the further examination and that diet is not sufficient to allow of the time limits specified in subsection (6) above and subsection (1) of section 38 of this Act, the sheriff shall (either or both)—

(a) direct that those subsections shall apply in the case with such modifications as to time limits as he shall specify;

(b) subject to subsection (8) below, postpone the trial diet.

(8) Postponement under paragraph (b) of subsection (7) above alone shall only be competent where the sheriff considers that to proceed under paragraph (a) of that subsection alone, or paragraphs (a) and (b) together, would not be practicable.

(9) Any time limit mentioned in subsection (6) above and subsection (1) of section 38 of this Act (including any such time limit as modified by a direction under subsection (7) above) may be extended, in respect of the case, by the High Court.

(10) A copy of—

(a) a transcript required by paragraph (a) of subsection (6) above to be served on an accused or by paragraph (b) of that subsection to be served on his solicitor; or

(b) a notice required by paragraph (a) of section 38(1) of this Act to be served on an accused or on the prosecutor,

shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served such transcript or notice, together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of such a copy.

38 Judicial examination: rectification of record of proceedings.

(1) Subject to subsections (7) to (9) of section 37 of this Act, where notwithstanding the certification mentioned in subsection (5) of that section the accused or the prosecutor is of the opinion that a transcript served under paragraph (a) of subsection (6) of that section contains an error or is incomplete he may—

(a) within 10 days of service under the said paragraph (a), serve notice of such opinion on the prosecutor or as the case may be the accused; and

(b) within 14 days of service under paragraph (a) of this subsection, apply to the sheriff for the error or incompleteness to be rectified,

and the sheriff shall within 7 days of the application hear the prosecutor and the accused in chambers and may authorise rectification.

(2) Where—

(a) the person on whom notice is served under paragraph (a) of subsection (1) above agrees with the opinion to which that notice relates the sheriff may dispense with such hearing;

(b) the accused neither attends, nor secures that he is represented at, such hearing it shall, subject to paragraph (a) above, nevertheless proceed.

(3) In so far as it is reasonably practicable so to arrange, the sheriff who deals with any application made under subsection (1) above shall be the sheriff before whom the examination or further examination to which the application relates was conducted.

(4) Any decision of the sheriff, as regards rectification under subsection (1) above, shall be final.

39 Judicial examination: charges arising in different districts.

(1) An accused against whom there are charges in more than one sheriff court district may be brought before the sheriff of any one such district at the instance of the procurator fiscal of such district for examination on all or any of the charges.

(2) Where an accused is brought for examination as mentioned in subsection (1) above, he may be dealt with in every respect as if all of the charges had arisen in the district where he is examined.

(3) This section is without prejudice to the power of the Lord Advocate under section 10 of this Act to determine the court before which the accused shall be tried on such charges.

Committal

40 Committal until liberated in due course of law.

(1) Every petition shall be signed and no accused shall be committed until liberated in due course of law for any crime or offence without a warrant in writing expressing the particular charge in respect of which he is committed.

(2) Any such warrant for imprisonment which either proceeds on an unsigned petition or does not express the particular charge shall be null and void.

(3) The accused shall immediately be given a true copy of the warrant for imprisonment signed by the constable or person executing the warrant before imprisonment or by the prison officer receiving the warrant.

PART V

CHILDREN AND YOUNG PERSONS

41 Age of criminal responsibility.

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

VALID FROM 28/03/2011

[F36 41A Prosecution of children under 12

(1) A child under the age of 12 years may not be prosecuted for an offence.

(2) A person aged 12 years or more may not be prosecuted for an offence which was committed at a time when the person was under the age of 12 years.]

Textual Amendments

F36 S. 41A inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 52(2)**, 206(1)

42 Prosecution of children.

(1) No child under the age of 16 years shall be prosecuted for any offence except on the instructions of the Lord Advocate, or at his instance; and no court other than the High

Court and the sheriff court shall have jurisdiction over a child under the age of 16 years for an offence.

(2) 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.

(3) Where the child is arrested, the constable by whom he is arrested or the police officer 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.

(4) 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 305 of this Act, for applying, with the necessary adaptations and modifications, such of the provisions of this Act relating to summary proceedings as appear appropriate for the purpose.

(5) The parent or guardian whose attendance is required under this section is—

(a) the parent who has parental responsibilities or parental rights (within the meaning of sections 1(3) and 2(4) respectively of the [M18]Children (Scotland) Act 1995) in relation to the child; or

(b) the guardian having actual possession and control of him.

(6) 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 care or charge of his parent by an order of a court.

(7) Where a child is to be brought before a court, notification of the day and time 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.

(8) Where a local authority receive notification under subsection (7) above they shall make such investigations and submit 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.

(9) Any child detained in a police station, or being conveyed to or from any criminal court, or waiting before or after attendance in such court, shall be prevented 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.

(10) Any female child shall, while detained, being conveyed or waiting as mentioned in subsection (9) above, be kept under the care of a woman.

Marginal Citations

M18 1995 c.36.

43 Arrangements where 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, a police officer of the rank of inspector or above or the officer in charge of the police station to which he is brought, shall inquire into the case, and, subject to subsection (3) below, **[**[F37]may liberate him—.

(a) on a written undertaking being entered into by him or his parent or guardian that he will attend at a court and at a time specified in the undertaking; or

(b) unconditionally.**]**

(2) An undertaking mentioned in subsection (1) above shall be signed by the child or, as the case may be, the parent or guardian and shall be certified by the officer mentioned in that subsection.

(3) A person shall not be liberated under subsection (1) where—

(a) the charge is one of homicide or other grave crime;

(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.

(4) Where a person who is apparently a child having been apprehended is not liberated as mentioned in subsection (1) above, the police officer referred to in that subsection shall cause him to be kept in a place of safety other than a police station until he can be brought before a sheriff unless the officer certifies—

(a) that it is impracticable to do so;

(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.

(5) Where a person who is apparently a child has not been liberated as mentioned in subsection (1) above but has been kept under subsection (4) above, and it is decided not to proceed with the charge against him, a constable shall so inform the Principal Reporter.

(6) Any person, who without reasonable excuse **[**[F38]fails to appear at the court and at the time specified in the undertaking entered into by him or on his behalf under subsection (1) above**]**, shall be guilty of an offence, and liable on summary conviction **[**[F39]of any charge made against him at the time he was liberated under that subsection**]** in addition to any other penalty which it is competent for the court to impose on him, to a fine not exceeding level 3 on the standard scale.

(7) In any proceedings relating to an offence under this section, a writing, purporting to be such an undertaking as is mentioned in subsection (1) above and bearing to be signed and certified, shall be sufficient evidence of the undertaking given by the accused.

Textual Amendments

F37 Words and s. 43(1)(a)(b) substituted (1.8.1997) for words by 1997 c. 48, **s. 55(2)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F38 Words in s. 43(6) substituted (1.8.1997) by 1997 c. 48, **s. 55(3)(a)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F39 Words in s. 43(6) inserted (1.8.1997) by 1997 c. 48, **s. 55(3)(b)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

Modifications etc. (not altering text)
C5 S. 43 modified (1.4.1997) by S.I. 1996/3255, **reg. 14(1)(b)**

44 Detention of children.

(1) Where a child appears before the sheriff in summary proceedings and pleads guilty to, or is found guilty of, an offence to which this section applies, the sheriff may order that he be detained in residential accommodation provided under Part II of the [M19]Children (Scotland) Act 1995 by the appropriate local authority for such period not exceeding one year as may be specified in the order in such place (in any part of the United Kingdom) as the local authority may, from time to time, consider appropriate.

(2) This section applies to any offence in respect of which it is competent to impose imprisonment on a person of the age of 21 years or more.

(3) Where a child in respect of whom an order is made under this section is detained by the appropriate local authority, that authority shall have the same powers and duties in respect of the child as they would have if he were subject to a supervision requirement.

(4) Where a child in respect of whom an order is made under this section is also subject to a supervision requirement, subject to subsection (6) below, the supervision requirement shall be of no effect during any period for which he is required to be detained under the order.

(5) The Secretary of State may, by regulations made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, make such provision as he considers necessary as regards the detention in secure accommodation of children in respect of whom orders have been made under this section.

(6) Where a child is detained in residential accommodation in pursuance of an order under—

(a) subsection (1) above, he shall be released from such detention not later than the date by which half the period specified in the order has (following commencement of the detention) elapsed but, without prejudice to subsection (7) below, until the entire such period has so elapsed may be required by the local authority to submit to supervision in accordance with such conditions as they consider appropriate;

(b) subsection (1) above or (8) below, the local authority may at any time review his case and may, in consequence of such review and after having regard to the best interests of the child and the need to protect members of the public, release the child—

(i) for such period and on such conditions as the local authority consider appropriate; or

(ii) unconditionally.

(7) Where a child released under paragraph (a) or (b)(ii) of subsection (6) above is subject to a supervision requirement, the effect of that requirement shall commence or, as the case may be, resume upon such release.

(8) If, while released under paragraph (a) or (b) of subsection (6) above (and before the date on which the entire period mentioned in the said paragraph (a) has, following the

commencement of the detention, elapsed), a child commits an offence to which this section applies and (whether before or after that date) pleads guilty to or is found guilty of it a court may, instead of or in addition to making any other order in respect of that plea or finding, order that he be returned to the residential accommodation provided by the authority which released him and that his detention in that accommodation or any other such accommodation provided by that authority shall continue for the whole or any part of the period which—

(a) begins with the date of the order for his return; and

(b) is equal in length to the period between the date on which the new offence was committed and the date on which that entire period elapses.

(9) An order under subsection (8) above for return to residential accommodation provided by the appropriate local authority—

(a) shall be taken to be an order for detention in residential accommodation for the purpose of this Act and any appeal; and

(b) shall, as the court making that order may direct, either be for a period of detention in residential accommodation before and to be followed by, or to be concurrent with, any period of such detention to be imposed in respect of the new offence (being in either case disregarded in determining the appropriate length of the period so imposed).

(10) Where a local authority consider it appropriate that a child in respect of whom an order has been made under subsection (1) or (8) above should be detained in a place in any part of the United Kingdom outside Scotland, the order shall be a like authority as in Scotland to the person in charge of the place to restrict the child's liberty to such an extent as that person may consider appropriate having regard to the terms of the order.

(11) In this section—

"the appropriate local authority" means—

(a) where the child usually resides in Scotland, the local authority for the area in which he usually resides;

(b) in any other case, the local authority for the area in which the offence was committed; and

"secure accommodation" has the meaning assigned to it in Part II of the [M20]Children (Scotland) Act 1995.

Modifications etc. (not altering text)
C6 S. 44 modified (1.4.1997) by S.I. 1996/3255, **art. 13(1)**

Marginal Citations
M19 1995 c.36.
M20 1995 c.36.

45 Security for child's good behaviour.

(1) Where a child has been charged with an offence the court may order his parent or guardian to give security for his co-operation in securing the child's good behaviour.

(2) Subject to subsection (3) below, an order under this section shall not be made unless the parent or guardian has been given the opportunity of being heard.

(3) Where a parent or guardian has been required to attend and fails to do so, the court may make an order under this section.

(4) Any sum ordered to be paid by a parent or guardian on the forfeiture of any security given under this section 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.

(5) In this section "parent" means either of the child's parents, if that parent has parental responsibilities or parental rights (within the meaning of sections 1(3) and 2(4) respectively of the Children (Scotland) Act 1995) in relation to him.

46 Presumption and determination of age of child.

(1) Where a person charged with an offence **[**F40, whose age is not specified in the indictment or complaint in relation to that offence,**]**is brought before a court other than for the purpose of giving evidence, and it appears to the court that he is a child, the court shall make due enquiry 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, and the age presumed or declared by the court to be the age of that person shall, for the purposes of this Act or the M21Children and Young Persons (Scotland) Act 1937, be deemed to be the true age of that person.

(2) The court in making any inquiry in pursuance of subsection (1) above shall have regard to the definition of child for the purposes of this Act.

(3) **[**F41Without prejudice to section 255A of this Act,**]**Where in an indictment or complaint for—

(a) an offence under the Children and Young Persons (Scotland) 1937;

(b) any of the offences mentioned in paragraphs 3 and 4 of Schedule 1 to this Act; or

(c) an offence under section 1, 10(1) to (3) or 12 of the M22Criminal Law (Consolidation) (Scotland) Act 1995,

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 M23Children and Young Persons (Scotland) Act 1937 or Part I of the Criminal Law (Consolidation) (Scotland) Act 1995 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 an indictment or complaint for an 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) An order or judgement of the court shall not be invalidated by any subsequent proof that—

(a) the age of a person mentioned in subsection (1) above has not been correctly stated to the court; or

(b) 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 by virtue of regulations made under the [M24]Children (Scotland) Act 1995 for the purpose of giving effect to orders made in different parts of the United Kingdom.

(6) Where it appears to the court that a person mentioned in subsection (1) above has attained the age of 17 years, he shall for the purposes of this Act or the Children and Young Persons (Scotland) Act 1937 be deemed not to be a child.

(7) In subsection (3) above, 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 307 of this Act.

Textual Amendments

F40 Words in s. 46(1) inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(4)(a)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F41 Words in s. 46(3) inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(4)(a)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

Marginal Citations

M21 1937 c.37.

M22 1995 c.39.

M23 1937 c.37.

M24 1995 c.36.

47 Restriction on report of proceedings involving children.

(1) Subject to subsection (3) below, no newspaper report of any proceedings in a court shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any person under the age of 16 years concerned in the proceedings, either—

(a) as being a person against or in respect of whom the proceedings are taken; or

(b) as being a witness in the proceedings.

(2) Subject to subsection (3) below, no picture which is, or includes, a picture of a person under the age of 16 years concerned in proceedings as mentioned in subsection (1) above shall be published in any newspaper in a context relevant to the proceedings.

(3) The requirements of subsections (1) and (2) above shall be applied in any case mentioned in any of the following paragraphs to the extent specified in that paragraph—

(a) where a person under the age of 16 years is concerned in the proceedings as a witness only and no one against whom the proceedings are taken is under the age of 16 years, the requirements shall not apply unless the court so directs;

(b) where, at any stage of the proceedings, the court, if it is satisfied that it is in the public interest so to do, directs that the requirements (including the

requirements as applied by a direction under paragraph (a) above) shall be dispensed with to such extent as the court may specify; and

(c) where the Secretary of State, after completion of the proceedings, if satisfied as mentioned in paragraph (b) above, by order dispenses with the requirements to such extent as may be specified in the order.

(4) This section shall, with the necessary modifications, apply in relation to sound and television programmes included in a programme service (within the meaning of the [M25]Broadcasting Act 1990) as it applies in relation to newspapers.

(5) A person who publishes matter in contravention of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 of the standard scale.

(6) In this section, references to a court shall not include a court in England, Wales or Northern Ireland.

Modifications etc. (not altering text)

C7 S. 47 modified (S.) (31.3.2006) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 111(6)**, 145(2); S.S.I. 2004/420, **art. 2** (as amended by S.S.I. 2005/553, art. 2)

Marginal Citations

M25 1990 c.42.

48 Power to refer certain children to reporter.

(1) A court by or before which a person is convicted of having committed an offence to which this section applies may refer—

(a) a child in respect of whom an offence mentioned in paragraph (a) or (b) of subsection (2) below has been committed; or

(b) any child who is, or who is likely to become, a member of the same household as the person who has committed an offence mentioned in paragraph (b) or (c) of that subsection or the person in respect of whom the offence so mentioned was committed,

to the Principal Reporter, and certify that the offence shall be a ground established for the purposes of Chapter 3 of Part II of the [M26]Children (Scotland) Act 1995.

(2) This section applies to an offence—

(a) under section 21 of the [M27]Children and Young Persons (Scotland) Act 1937;

(b) mentioned in Schedule 1 to this Act; or

(c) in respect of a person aged 17 years or over which constitutes the crime of incest.

Marginal Citations

M26 1995 c.36.

M27 1937 c.37.

49 Reference or remit to children's hearing.

(1) Where a child who is not subject to a supervision requirement pleads guilty to, or is found guilty of, an offence the court—

(a) instead of making an order on that plea or finding, may remit the case to the Principal Reporter to arrange for the disposal of the case by a children's hearing; or

(b) on that plea or finding may request the Principal Reporter 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 subsection (1) above, 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 mentioned in paragraph (a) of that subsection.

(3) Where a child who is subject to a supervision requirement pleads guilty to, or is found guilty of, an offence the court dealing with the case if it is—

(a) the High Court, may; and

(b) the sheriff court, shall,

request the Principal Reporter 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 mentioned in subsection (1)(a) above.

(4) **[**[F42]Subject to any appeal against any decision to remit made under subsection (1)(a) above or (7)(b) below,**]**Where a court has remitted a case to the Principal Reporter under this section, the jurisdiction of the court in respect of the child shall cease, and his case shall stand referred to a children's hearing.

(5) Nothing in this section shall apply to a case in respect of an offence the sentence for which is fixed by law.

(6) Where a person who is—

(a) not subject to a supervision requirement;

(b) over the age of 16; and

(c) 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, the offence the court may request the Principal Reporter to arrange a children's hearing for the purpose of obtaining their advice as to the treatment of the person.

(7) On consideration of any advice obtained under subsection (6) above, the court may, as it thinks proper—

(a) itself dispose of the case; or

(b) where the hearing have so advised, remit the case to the Principal Reporter for the disposal of the case by a children's hearing.

Textual Amendments

F42 Words in s. 49(4) inserted (1.8.1997) by 1997 c. 48, **s. 23(a)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

50 Children and certain proceedings.

(1) No child under 14 years of age (other than an infant in arms) shall be permitted to be present in court during any proceedings against any other person charged with an offence unless his presence is required as a witness or otherwise for the purposes of justice.

(2) Any child present in court when, under subsection (1) above, he is not to be permitted to be so shall be ordered to be removed.

(3) 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—

(a) members or officers of the court;

(b) parties to the case before the court, their counsel or solicitors or persons otherwise directly concerned in the case;

(c) *bona fide* representatives of news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings; or

(d) such other persons as the court may specially authorise to be present,

shall be excluded from the court during the taking of the evidence of that witness.

(4) The powers conferred on a court by subsection (3) above shall be in addition and without prejudice to any other powers of the court to hear proceedings*in camera*.

(5) 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.

(6) 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.

51 Remand and committal of children and young persons.

(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 or ordained to appear, then, except as otherwise expressly provided by this section, the following provisions shall have effect—

(a) subject to paragraph (b) below, if he is under 16 years of age the court shall, instead of committing him to prison, commit him to the local authority **[**F43which it considers appropriate**]** to be detained—

(i) where the court so requires, in secure accommodation within the meaning of Part II of the M28Children (Scotland) Act 1995; and

(ii) in any other case, in a suitable place of safety chosen by the authority;

[F44(aa) if the person is over 16 years of age and subject to a supervision requirement, the court may, instead of committing him to prison, commit him to the local authority which it considers appropriate to be detained as mentioned in sub-paragraphs (i) or (ii) of paragraph (a) above;**]**

(b) if he is a person of over 16 years of age **[**F45to whom paragraph (aa) above does not apply**]**, 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 committal 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 committal and commit the person to the local authority **[**[F46]which he considers appropriate**]** to be detained—

(a) where the court so requires, in secure accommodation within the meaning of Part II of the [M29]Children (Scotland) Act 1995; and

(b) in any other case, in a suitable place of safety chosen by the authority.

[[F47](4A) The local authority which may be appropriate in relation to a power to commit a person under paragraphs (a) or (aa) of subsection (1) or subsection (4) above may, without prejudice to the generality of those powers, be—

(a) the local authority for the area in which the court is situated;

(b) if the person is usually resident in Scotland, the local authority for the area in which he is usually resident;

(c) if the person is subject to a supervision requirement, the relevant local authority within the meaning of Part II of the [M30]Children (Scotland) Act 1995 in relation to that requirement.**]**

Textual Amendments

F43 Words in s. 51(1)(a) substituted (1.8.1997) by 1997 c. 48, **s. 56(2)(a)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F44 S. 51(1)(aa) inserted (1.8.1997) by 1997 c. 48, **s. 56(2)(b)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F45 Words in s. 51(1)(b) inserted (1.8.1997) by 1997 c. 48, **s. 56(2)(c)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F46 Words in s. 51(4) substituted (1.8.1997) by 1997 c. 48, **s. 56(3)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F47 S. 51(4A) inserted (1.8.1997) by 1997 c. 48, **s. 56(4)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

Modifications etc. (not altering text)

C8 S. 51(1)(a)(ii) modified (1.4.1997) by S.I. 1996/3255, **reg. 14(1)(a)**
S. 51(4)(b) modified (1.4.1997) by S.I. 1996/3255, **reg. 14(1)(a)**

Marginal Citations

M28 1995 c.36.
M29 1995 c.36.
M30 1995 c.36.

PART VI

MENTAL DISORDER

Modifications etc. (not altering text)

C9 Pt. VI (ss. 52-63) power to apply conferred (prosp.) by 1955 c. 18, **s. 116B(4)(c)** (as substituted (prosp.) by 1996 c. 46, ss. 8, 36(2), **Sch. 2 para. 1** (the said 1996 c. 46, **Sch. 2** was repealed (21.3. 2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), s. 58(2), **Sch. 11**; S.I. 2005/579, **art. 3(i)(ix)**)
Pt. VI (ss. 52-63) power to apply conferred (prosp.) by 1995 c. 19, **s. 116B(4)(c)** (as substituted (prosp.) by 1996 c. 46, ss. 8, 36(2), **Sch. 2 para. 1**) (the said 1996 c. 46, **Sch. 2** was repealed (21.3. 2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), s. 58(2), **Sch. 11**; S.I. 2005/579, **art. 3(i)(ix)**)
Pt. VI (ss. 52-63) power to apply conferred (prosp.) by 1957 c. 53, **s. 63B(4)(c)** (as substituted (prosp.) by 1996 c. 46, ss. 8, 36(2), **Sch. 2 para. 4**) (the said 1996 c. 46, **Sch. 2** was repealed (21.3. 2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), s. 58(2), **Sch. 11**; S.I. 2005/579, **art. 3(i)(ix)**)

C10 Pt. VI (ss. 52-63) applied (prosp.) by 1955 c. 18, **s. 116C(6)** (as substituted (prosp.) by 1996 c. 46, ss. 8, 36(2), **Sch. 2 para. 1**) (the said 1996 c. 46, **Sch. 2** was repealed (21.3. 2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), s. 58(2), **Sch. 11**; S.I. 2005/579, **art. 3(i)(ix)**)
Pt. VI (ss. 52-63) applied (prosp.) by 1955 c. 19, **s. 116C(6)** (as substituted (prosp.) by 1996 c. 46, ss. 8, 36(2), **Sch. 2 para. 1**) (the said 1996 c. 46, **Sch. 2** was repealed (21.3. 2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), s. 58(2), **Sch. 11**; S.I. 2005/579, **art. 3(i)(ix)**)
Pt. VI (ss. 52-63) applied (prosp.) by 1957 c. 53, **s. 63C(6)** (as substituted (prosp.) by 1996 c. 46, ss. 8, 36(2), **Sch. 2 para. 4**) (the said 1996 c. 46, **Sch. 2** was repealed (21.3. 2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), s. 58(2), **Sch. 11**; S.I. 2005/579, **art. 3(i)(ix)**)
Pt. VI (ss. 52-63) applied (prosp.) by 1968 c. 20, **s. 23(4)** (as substituted (prosp.) by 1996 c. 46, ss. 8, 36(2), **Sch. 2 para. 9**) (the said 1996 c. 46, **Sch. 2** was repealed (21.3. 2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), s. 58(2), **Sch. 11**; S.I. 2005/579, **art. 3(i)(ix)**)

VALID FROM 25/06/2012

[F48 Criminal responsibility of mentally disordered persons

Textual Amendments

F48 Ss. 51A, 51B and preceding cross-heading inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 168**, 206(1)

51A Criminal responsibility of persons with mental disorder

(1) A person is not criminally responsible for conduct constituting an offence, and is to be acquitted of the offence, if the person was at the time of the conduct unable by reason of mental disorder to appreciate the nature or wrongfulness of the conduct.

(2) But a person does not lack criminal responsibility for such conduct if the mental disorder in question consists only of a personality disorder which is characterised solely or principally by abnormally aggressive or seriously irresponsible conduct.

(3) The defence set out in subsection (1) is a special defence.

(4) The special defence may be stated only by the person charged with the offence and it is for that person to establish it on the balance of probabilities.

(5) In this section, "conduct" includes acts and omissions.

VALID FROM 25/06/2012

Diminished responsibility

51B Diminished responsibility

(1) A person who would otherwise be convicted of murder is instead to be convicted of culpable homicide on grounds of diminished responsibility if the person's ability to determine or control conduct for which the person would otherwise be convicted of murder was, at the time of the conduct, substantially impaired by reason of abnormality of mind.

(2) For the avoidance of doubt, the reference in subsection (1) to abnormality of mind includes mental disorder.

(3) The fact that a person was under the influence of alcohol, drugs or any other substance at the time of the conduct in question does not of itself—

(a) constitute abnormality of mind for the purposes of subsection (1), or

(b) prevent such abnormality from being established for those purposes.

(4) It is for the person charged with murder to establish, on the balance of probabilities, that the condition set out in subsection (1) is satisfied.

(5) In this section, "conduct" includes acts and omissions.**]**

Committal of mentally disordered persons

52 Power of court to commit to hospital an accused suffering from mental disorder.

(1) 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 the prosecutor to bring before the court such evidence as may be available of the mental condition of that person.

(2) 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.

(3) Where an accused is committed to a hospital as mentioned in subsection (2) above, 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 V of the [M31]Mental Health (Scotland) Act 1984, he shall be detained in the hospital specified in the warrant 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.

(4) 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.

(5) No person shall be committed to a hospital under this section except on the written or oral evidence of a registered medical practitioner.

(6) Without prejudice to subsection (4) above, the court may review an order under subsection (2) above on the ground that there has been a change of circumstances since the order was made and, on such review—

(a) where the court considers that such an order is no longer required in relation to a person, it shall revoke the order and may deal with him in such way mentioned in subsection (4) above as the court thinks appropriate;

(b) in any other case, the court may—

(i) confirm or vary the order; or

(ii) revoke the order and deal with him in such way mentioned in subsection (4) above as the court considers appropriate.

(7) Subsections (2) to (5) above shall apply to the review of an order under subsection (6) above as they apply to the making of an order under subsection (2) above.

Marginal Citations

M31 1984 c.36.

VALID FROM 05/10/2005

[F49Remit of mentally disordered persons from district court

Textual Amendments

F49 Ss. 52A-52U inserted (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), **ss. 130**, 333(1)-(4); S.S.I. 2005/161, **art. 3** (as amended (27.9.2005) by S.S.I. 2005/465, art. 2, sch. 1 para. 32(13)(a)(i)(ii), **sch. 2**)

52A Remit of certain mentally disordered persons from district court to sheriff court

Where—

(a) a person has been charged in a district court with an offence punishable by imprisonment; and

(b) it appears to the court that the person has a mental disorder,

the district court shall remit the person to the sheriff in the manner provided by section 7(9) and (10) of this Act.

VALID FROM 05/10/2005

Assessment orders

52B Prosecutor's power to apply for assessment order

(1) Where—

(a) a person has been charged with an offence;

(b) a relevant disposal has not been made in the proceedings in respect of the offence; and

(c) it appears to the prosecutor that the person has a mental disorder,

the prosecutor may apply to the court for an order under section 52D(2) of this Act (in this Act referred to as an "assessment order") in respect of that person.

(2) Where the prosecutor applies for an assessment order under subsection (1) above, the prosecutor shall, as soon as reasonably practicable after making the application, inform the persons mentioned in subsection (3) below of the making of the application.

(3) Those persons are—

(a) the person in respect of whom the application is made;

(b) any solicitor acting for the person; and

(c) in a case where the person is in custody, the Scottish Ministers.

(4) In this section—

"court" means any court, other than a district court, competent to deal with the case; and

"relevant disposal" means—

(a) the liberation in due course of law of the person charged;

(b) the desertion of summary proceedings *pro loco et tempore* or *simpliciter*;

(c) the desertion of solemn proceedings *simpliciter*;

(d) the acquittal of the person charged; or

(e) the conviction of the person charged.

52C Scottish Ministers' power to apply for assessment order

(1) Where—

(a) a person has been charged with an offence;
(b) the person has not been sentenced;
(c) the person is in custody; and
(d) it appears to the Scottish Ministers that the person has a mental disorder,

the Scottish Ministers may apply to the court for an assessment order in respect of that person.

(2) Where the Scottish Ministers apply for an order under subsection (1) above, they shall, as soon as reasonably practicable after making the application, inform the persons mentioned in subsection (3) below of the making of the application.

(3) Those persons are—
(a) the person in respect of whom the application is made;
(b) any solicitor acting for the person; and
(c) in a case where a relevant disposal has not been made in the proceedings in respect of the offence with which the person is charged, the prosecutor.

(4) In this section, "court" and "relevant disposal" have the same meanings as in section 52B of this Act.

52D Assessment order

(1) This section applies where an application for an assessment order is made under section 52B(1) or 52C(1) of this Act.

(2) If the court is satisfied—
(a) on the written or oral evidence of a medical practitioner, as to the matters mentioned in subsection (3) below; and
(b) that, having regard to the matters mentioned in subsection (4) below, it is appropriate,

it may, subject to subsection (5) below, make an assessment order authorising the measures mentioned in subsection (6) below and specifying any matters to be included in the report under section 52G(1) of this Act.

(3) The matters referred to in subsection (2)(a) above are—
(a) that there are reasonable grounds for believing—
(i) that the person in respect of whom the application is made has a mental disorder;
(ii) that it is necessary to detain the person in hospital to assess whether the conditions mentioned in subsection (7) below are met in respect of the person; and
(iii) that if the assessment order were not made there would be a significant risk to the health, safety or welfare of the person or a significant risk to the safety of any other person;
(b) that the hospital proposed by the medical practitioner is suitable for the purpose of assessing whether the conditions mentioned in subsection (7) below are met in respect of the person;
(c) that, if an assessment order were made, the person could be admitted to such hospital before the expiry of the period of 7 days beginning with the day on which the order is made; and

(d) that it would not be reasonably practicable to carry out the assessment mentioned in paragraph (b) above unless an order were made.

(4) The matters referred to in subsection (2)(b) above are—

(a) all the circumstances (including the nature of the offence with which the person in respect of whom the application is made is charged or, as the case may be, of which the person was convicted); and

(b) any alternative means of dealing with the person.

(5) The court may make an assessment order only if the person in respect of whom the application is made has not been sentenced.

(6) The measures are—

(a) in the case of a person who, when the assessment order is made, has not been admitted to the specified hospital, the removal, before the expiry of the period of 7 days beginning with the day on which the order is made, of the person to the specified hospital by—

(i) a constable;

(ii) a person employed in, or contracted to provide services in or to, the specified hospital who is authorised by the managers of that hospital to remove persons to hospital for the purposes of this section; or

(iii) a specified person;

(b) the detention, for the period of 28 days beginning with the day on which the order is made, of the person in the specified hospital; and

(c) during the period of 28 days beginning with the day on which the order is made, the giving to the person, in accordance with Part 16 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), of medical treatment.

(7) The conditions referred to in paragraphs (a)(ii) and (b) of subsection (3) above are—

(a) that the person in respect of whom the application is made has a mental disorder;

(b) that medical treatment which would be likely to—

(i) prevent the mental disorder worsening; or

(ii) alleviate any of the symptoms, or effects, of the disorder,

is available for the person; and

(c) that if the person were not provided with such medical treatment there would be a significant risk—

(i) to the health, safety or welfare of the person; or

(ii) to the safety of any other person.

(8) The court may make an assessment order in the absence of the person in respect of whom the application is made only if—

(a) the person is represented by counsel or a solicitor;

(b) that counsel or solicitor is given an opportunity of being heard; and

(c) the court is satisfied that it is—

(i) impracticable; or

(ii) inappropriate,

for the person to be brought before it.

(9) An assessment order may include such directions as the court thinks fit for the removal of the person subject to the order to, and detention of the person in, a place of safety pending the person's admission to the specified hospital.

(10) The court shall, as soon as reasonably practicable after making an assessment order, give notice of the making of the order to—

(a) the person subject to the order;

(b) any solicitor acting for the person;

(c) in a case where—

(i) the person has been charged with an offence; and

(ii) a relevant disposal has not been made in the proceedings in respect of the offence,

the prosecutor;

(d) in a case where the person, immediately before the order was made, was in custody, the Scottish Ministers; and

(e) the Mental Welfare Commission.

(11) In this section—

"court" has the same meaning as in section 52B of this Act;

"medical treatment" has the meaning given by section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);

"relevant disposal" has the same meaning as in section 52B of this Act; and

"specified" means specified in the assessment order.

52E Assessment order made ex proprio motu: application of section 52D

(1) Where—

(a) a person has been charged with an offence;

(b) the person has not been sentenced; and

(c) it appears to the court that the person has a mental disorder,

the court may, subject to subsections (2) and (3) below, make an assessment order in respect of that person.

(2) The court may make an assessment order under subsection (1) above only if it would make one under subsections (2) to (11) of section 52D of this Act; and those subsections shall apply for the purposes of subsection (1) above as they apply for the purposes of subsection (1) of that section, references in those subsections to the person in respect of whom the application is made being construed as references to the person in respect of whom it is proposed to make an assessment order.

(3) An assessment order made under subsection (1) above shall, for the purposes of this Act and the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), be treated as if made under section 52D(2) of this Act.

(4) In this section, "court" has the same meaning as in section 52B of this Act.

52F Assessment order: supplementary

(1) If, before the expiry of the period of 7 days beginning with the day on which an assessment order is made—

(a) in the case of a person who, immediately before the order was made, was in custody, it appears to the Scottish Ministers; or

(b) in any other case, it appears to the court,

that, by reason of emergency or other special circumstances, it is not reasonably practicable for the person to be admitted to the hospital specified in the order, the Scottish Ministers, or, as the case may be, the court, may direct that the person be admitted to the hospital specified in the direction.

(2) Where the court makes a direction under subsection (1) above, it shall, as soon as reasonably practicable after making the direction, inform the person having custody of the person subject to the assessment order of the making of the direction.

(3) Where the Scottish Ministers make a direction under subsection (1) above, they shall, as soon as reasonably practicable after making the direction, inform—

(a) the court;

(b) the person having custody of the person subject to the assessment order; and

(c) in a case where—

(i) the person has been charged with an offence; and

(ii) a relevant disposal has not been made in the proceedings in respect of the offence,

the prosecutor,

of the making of the direction.

(4) Where a direction is made under subsection (1) above, the assessment order shall have effect as if the hospital specified in the direction were the hospital specified in the order.

(5) In this section—

"court" means the court which made the assessment order; and

"relevant disposal" has the same meaning as in section 52B of this Act.

52G Review of assessment order

(1) The responsible medical officer shall, before the expiry of the period of 28 days beginning with the day on which the assessment order is made, submit a report in writing to the court—

(a) as to whether the conditions mentioned in section 52D(7) of this Act are met in respect of the person subject to the order; and

(b) as to any matters specified by the court under section 52D(2) of this Act.

(2) The responsible medical officer shall, at the same time as such officer submits the report to the court, send a copy of such report—

(a) to the person in respect of whom the report is made;

(b) to any solicitor acting for the person;

(c) in a case where—

(i) the person has been charged with an offence; and

(ii) a relevant disposal has not been made in the proceedings in respect of the offence,

to the prosecutor; and

(d) to the Scottish Ministers.

(3) Subject to subsection (4) below, the court shall, on receiving a report submitted under subsection (1) above, revoke the assessment order and—

(a) subject to subsections (7) and (8) below, make a treatment order; or

(b) commit the person to prison or such other institution to which the person might have been committed had the assessment order not been made or otherwise deal with the person as the court considers appropriate.

(4) If, on receiving a report submitted under subsection (1) above, the court is satisfied that further time is necessary to assess whether the conditions mentioned in section 52D(7) of this Act are met in respect of the person subject to the assessment order, it may, on one occasion only, make an order extending the assessment order for a period not exceeding 7 days beginning with the day on which the order otherwise would cease to authorise the detention of the person in hospital.

(5) The court may, under subsection (4) above, extend an assessment order in the absence of the person subject to the order only if—

(a) the person is represented by counsel or a solicitor;

(b) that counsel or solicitor is given an opportunity of being heard; and

(c) the court is satisfied that it is—

(i) impracticable; or

(ii) inappropriate,

for the person to be brought before it.

(6) Where the court makes an order under subsection (4) above, it shall, as soon as reasonably practicable after making the order, give notice of the making of the order to—

(a) the persons mentioned in paragraphs (a) and (b) of subsection (2) above;

(b) in a case where—

(i) the person has been charged with an offence; and

(ii) a relevant disposal has not been made in the proceedings in respect of the offence,

the prosecutor;

(c) the Scottish Ministers; and

(d) the person's responsible medical officer.

(7) The court shall make a treatment order under subsection (3)(a) above only if it would make one under subsections (2) to (10) of section 52M of this Act; and those subsections shall apply for the purposes of subsection (3)(a) above as they apply for the purposes of that section, references in those subsections to the person in respect of whom the application is made being construed as references to the person in respect of whom it is proposed to make a treatment order.

(8) A treatment order made under subsection (3)(a) above shall, for the purposes of this Act and the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), be treated as if made under section 52M(2) of this Act.

(9) The responsible medical officer shall, where that officer is satisfied that there has been a change of circumstances since the assessment order was made which justifies the variation of the order, submit a report to the court in writing.

(10) Where a report is submitted under subsection (9) above, the court shall—

(a) if satisfied that the person need not be subject to an assessment order, revoke the order and take any action mentioned in subsection (3)(b) above; or

(b) if not so satisfied—

(i) confirm the order;

(ii) vary the order; or

(iii) revoke the order and take any action mentioned in subsection (3)(b) above.

(11) Sections 52D, 52F, 52H and 52J of this Act and subsections (1) to (3) above apply to the variation of an order under subsection (10)(b)(ii) above as they apply to an assessment order.

(12) In this section—

"court" means the court which made the assessment order;

"relevant disposal" has the same meaning as in section 52B of this Act; and

"responsible medical officer" means the person's responsible medical officer appointed under section 230 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

52H Early termination of assessment order

(1) This section applies where—

(a) in the case of a person who, when the assessment order is made, has not been removed to the hospital specified in the order, the period of 7 days beginning with the day on which the order is made has not expired;

(b) in the case of a person—

(i) who, when the assessment order is made, has been admitted to the hospital specified in the order; or

(ii) who has been removed under paragraph (a) of subsection (6) of section 52D of this Act to the hospital so specified,

the period of 28 days beginning with the day on which the order is made has not expired; or

(c) in the case of a person in respect of whom the court has made an order under section 52G(4) of this Act extending the assessment order for a period, the period for which the order was extended has not expired.

(2) An assessment order shall cease to have effect on the occurrence of any of the following events—

(a) the making of a treatment order in respect of the person subject to the assessment order;

(b) in a case where—

(i) the person subject to the assessment order has been charged with an offence; and

(ii) a relevant disposal had not been made in the proceedings in respect of that offence when the order was made,

the making of a relevant disposal in such proceedings;

(c) in a case where the person subject to the assessment order has been convicted of an offence but has not been sentenced—

(i) the deferral of sentence by the court under section 202(1) of this Act;

(ii) the making of one of the orders mentioned in subsection (3) below or
(iii) the imposition of any sentence.

(3) The orders are—
(a) an interim compulsion order;
(b) a compulsion order;
(c) a guardianship order;
(d) a hospital direction;
(e) any order under section 57 of this Act; or
(f) a probation order which includes a requirement imposed by virtue of section 230(1) of this Act.

(4) In this section, "relevant disposal" has the same meaning as in section 52B of this Act.

52J Power of court on assessment order ceasing to have effect

(1) Where, otherwise than by virtue of section 52G(3) or (10) or 52H(2) of this Act, an assessment order ceases to have effect the court shall commit the person who was subject to the order to prison or such other institution to which the person might have been committed had the order not been made or otherwise deal with the person as the court considers appropriate.

(2) In this section, "court" has the same meaning as in section 52B of this Act.

VALID FROM 05/10/2005

Treatment orders

52K Prosecutor's power to apply for treatment order

(1) Where—
(a) a person has been charged with an offence;
(b) a relevant disposal has not been made in the proceedings in respect of the offence; and
(c) it appears to the prosecutor that the person has a mental disorder,
the prosecutor may apply to the court for an order under section 52M of this Act (in this Act referred to as a "treatment order") in respect of that person.

(2) Where the prosecutor applies for a treatment order under subsection (1) above, the prosecutor shall, as soon as reasonably practicable after making the application, inform the persons mentioned in subsection (3) below of the making of the application.

(3) Those persons are—
(a) the person in respect of whom the application is made;
(b) any solicitor acting for the person; and
(c) in a case where the person is in custody, the Scottish Ministers.

(4) In this section, "court" and "relevant disposal" have the same meanings as in section 52B of this Act.

52L Scottish Ministers' power to apply for treatment order

(1) Where—

(a) a person has been charged with an offence;

(b) the person has not been sentenced;

(c) the person is in custody; and

(d) it appears to the Scottish Ministers that the person has a mental disorder,

the Scottish Ministers may apply to the court for a treatment order in respect of that person.

(2) Where the Scottish Ministers apply for an order under subsection (1) above, they shall, as soon as reasonably practicable after making the application, inform the persons mentioned in subsection (3) below of the making of the application.

(3) Those persons are—

(a) the person in respect of whom the application is made;

(b) any solicitor acting for the person; and

(c) in a case where a relevant disposal has not been made in the proceedings in respect of the offence with which the person is charged, the prosecutor.

(4) In this section, "court" and "relevant disposal" have the same meanings as in section 52B of this Act.

52M Treatment order

(1) This section applies where an application for a treatment order is made under section 52K(1) or 52L(1) of this Act.

(2) If the court is satisfied—

(a) on the written or oral evidence of two medical practitioners, as to the matters mentioned in subsection (3) below; and

(b) that, having regard to the matters mentioned in subsection (4) below, it is appropriate,

it may, subject to subsection (5) below, make a treatment order authorising the measures mentioned in subsection (6) below.

(3) The matters referred to in subsection (2)(a) above are—

(a) that the conditions mentioned in subsection (7) of section 52D of this Act are met in relation to the person in respect of whom the application is made;

(b) that the hospital proposed by the approved medical practitioner and the medical practitioner is suitable for the purpose of giving medical treatment to the person; and

(c) that, if a treatment order were made, such person could be admitted to such hospital before the expiry of the period of 7 days beginning with the day on which the order is made.

(4) The matters referred to in subsection (2)(b) above are—

(a) all the circumstances (including the nature of the offence with which the person in respect of whom the application is made is charged or, as the case may be, of which the person was convicted); and

(b) any alternative means of dealing with the person.

(5) The court may make a treatment order only if the person in respect of whom the application is made has not been sentenced.

(6) The measures are—

(a) in the case of a person who, when the treatment order is made, has not been admitted to the specified hospital, the removal, before the expiry of the period of 7 days beginning with the day on which the order is made, of the person to the specified hospital by—

(i) a constable;

(ii) a person employed in, or contracted to provide services in or to, the specified hospital who is authorised by the managers of that hospital to remove persons to hospital for the purposes of this section; or

(iii) a specified person;

(b) the detention of the person in the specified hospital; and

(c) the giving to the person, in accordance with Part 16 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), of medical treatment.

(7) The court may make a treatment order in the absence of the person in respect of whom the application is made only if—

(a) the person is represented by counsel or solicitor;

(b) that counsel or solicitor is given an opportunity of being heard; and

(c) the court is satisfied that it is—

(i) impracticable; or

(ii) inappropriate,

for the person to be brought before it.

(8) A treatment order may include such directions as the court thinks fit for the removal of the person subject to the order to, and detention of the person in, a place of safety pending the person's admission to the specified hospital.

(9) The court shall, as soon as reasonably practicable after making a treatment order, give notice of the making of the order to—

(a) the person subject to the order;

(b) any solicitor acting for the person;

(c) in a case where—

(i) the person has been charged with an offence; and

(ii) a relevant disposal has not been made in the proceedings in respect of the offence,

the prosecutor;

(d) in a case where the person, immediately before the order was made—

(i) was in custody; or

(ii) was subject to an assessment order and, immediately before that order was made, was in custody,

the Scottish Ministers; and

(e) the Mental Welfare Commission.

(10) In this section—

"court" has the same meaning as in section 52B of this Act;

"medical treatment" has the same meaning as in section 52D of this Act; and

"specified" means specified in the treatment order.

52N Treatment order made ex proprio motu: application of section 52M

(1) Where—

(a) a person has been charged with an offence;

(b) the person has not been sentenced; and

(c) it appears to the court that the person has a mental disorder,

the court may, subject to subsections (2) and (3) below, make a treatment order in respect of that person.

(2) The court may make a treatment order under subsection (1) above only if it would make one under subsections (2) to (10) of section 52M of this Act; and those subsections shall apply for the purposes of subsection (1) above as they apply for the purposes of subsection (1) of that section, references in those subsections to the person in respect of whom the application is made being construed as references to the person in respect of whom it is proposed to make a treatment order.

(3) A treatment order made under subsection (1) above shall, for the purposes of this Act and the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), be treated as if made under section 52M(2) of this Act.

(4) In this section, "court" has the same meaning as in section 52B of this Act.

52P Treatment order: supplementary

(1) If, before the expiry of the period of 7 days beginning with the day on which the treatment order is made—

(a) in the case of a person to whom subsection (2) below applies, it appears to the Scottish Ministers; or

(b) in any other case, it appears to the court,

that, by reason of emergency or other special circumstances, it is not reasonably practicable for the person to be admitted to the hospital specified in the order, the Scottish Ministers, or, as the case may be, the court, may direct that the person be admitted to the hospital specified in the direction.

(2) This subsection applies to—

(a) a person who is in custody immediately before the treatment order is made; or

(b) a person—

(i) who was subject to an assessment order immediately before the treatment order is made; and

(ii) who was in custody immediately before that assessment order was made.

(3) Where the court makes a direction under subsection (1) above, it shall, as soon as reasonably practicable after making the direction, inform the person having custody of the person subject to the treatment order of the making of the direction.

(4) Where the Scottish Ministers make a direction under subsection (1) above, they shall, as soon as reasonably practicable after making the direction, inform—

(a) the court;

(b) the person having custody of the person subject to the treatment order; and

(c) in a case where—

(i) the person has been charged with an offence; and

(ii) a relevant disposal has not been made in the proceedings in respect of the offence,

the prosecutor,

of the making of the direction.

(5) Where a direction is made under subsection (1) above, the treatment order shall have effect as if the hospital specified in the direction were the hospital specified in the order.

(6) In this section—

"court" means the court which made the treatment order; and

"relevant disposal" has the same meaning as in section 52B of this Act.

52Q Review of treatment order

(1) The responsible medical officer shall, where that officer is satisfied—

(a) that any of the conditions mentioned in section 52D(7) of this Act are no longer met in respect of the person subject to the treatment order; or

(b) that there has otherwise been a change of circumstances since the order was made which makes the continued detention of the person in hospital by virtue of the order no longer appropriate,

submit a report in writing to the court.

(2) Where a report is submitted under subsection (1) above, the court shall—

(a) if satisfied that the person need not be subject to the treatment order—

(i) revoke the order; and

(ii) commit the person to prison or such other institution to which the person might have been committed had the order not been made or otherwise deal with the person as the court considers appropriate; or

(b) if not so satisfied—

(i) confirm the order;

(ii) vary the order; or

(iii) revoke the order and take any action mentioned in paragraph (a)(ii) above.

(3) Sections 52M, 52P, this section and sections 52R and 52S of this Act apply to the variation of a treatment order under subsection (2)(b)(ii) above as they apply to a treatment order.

(4) In this section—

"court" means the court which made the treatment order; and

"responsible medical officer" means the person's responsible medical officer appointed under section 230 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

52R Termination of treatment order

(1) This section applies—

(a) where, in the case of a person who, when the treatment order is made, has not been removed to the hospital specified in the order, the period of 7 days beginning with the day on which the order is made has not expired; or

(b) in the case of a person—

(i) who, when the treatment order is made, has been admitted to the hospital specified in the order; or

(ii) who has been removed under paragraph (a) of subsection (6) of section 52M of this Act to the hospital so specified.

(2) A treatment order shall cease to have effect on the occurrence of any of the following events—

(a) in a case where—

(i) the person subject to the treatment order has been charged with an offence; and

(ii) a relevant disposal had not been made in the proceedings in respect of such offence when the order was made,

the making of a relevant disposal in such proceedings;

(b) in a case where the person subject to the treatment order has been convicted of an offence but has not been sentenced—

(i) the deferral of sentence by the court under section 202(1) of this Act;

(ii) the making of one of the orders mentioned in subsection (3) below; or

(iii) the imposition of any sentence.

(3) The orders are—

(a) an interim compulsion order;

(b) a compulsion order;

(c) a guardianship order;

(d) a hospital direction;

(e) any order under section 57 of this Act; or

(f) a probation order which includes a requirement imposed by virtue of section 230(1) of this Act.

(4) In this section, "relevant disposal" has the same meaning as in section 52B of this Act.

52S Power of court on treatment order ceasing to have effect

(1) Where, otherwise than by virtue of section 52Q(2) or 52R(2) of this Act, a treatment order ceases to have effect the court shall commit the person who was subject to the order to prison or such other institution to which the person might have been

committed had the order not been made or otherwise deal with the person as the court considers appropriate.

(2) In this section, "court" has the same meaning as in section 52B of this Act.

VALID FROM 05/10/2005

Prevention of delay in trials

52T Prevention of delay in trials: assessment orders and treatment orders

(1) Subsections (4) to (9) of section 65 of this Act shall apply in the case of a person committed for an offence until liberated in due course of law who is detained in hospital by virtue of an assessment order or a treatment order as those subsections apply in the case of an accused who is—

(a) committed for an offence until liberated in due course of law; and

(b) detained by virtue of that committal.

(2) Section 147 of this Act shall apply in the case of a person charged with an offence in summary proceedings who is detained in hospital by virtue of an assessment order or a treatment order as it applies in the case of an accused who is detained in respect of that offence.

(3) Any period during which, under—

(a) section 221 (as read with sections 222 and 223) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13); or

(b) section 224 (as read with sections 225 and 226) of that Act,

a patient's detention is not authorised shall be taken into account for the purposes of the calculation of any of the periods mentioned in subsection (4) below.

(4) Those periods are—

(a) the total periods of 80 days, 110 days and 140 days referred to in subsection (4) of section 65 of this Act as applied by subsection (1) above;

(b) those total periods as extended under subsection (5) or, on appeal, under subsection (8) of that section as so applied;

(c) the total of 40 days referred to in section 147 of this Act (prevention of delay in trials in summary proceedings) as applied by subsection (2) above; and

(d) that period as extended under subsection (2) of that section or, on appeal, under subsection (3) of that section as so applied.

VALID FROM 05/10/2005

Effect of assessment and treatment orders on pre-existing mental health orders

52U Effect of assessment order and treatment order on pre-existing mental health order

(1) This section applies where—

(a) a patient is subject to a relevant order; and

(b) an assessment order or a treatment order is made in respect of the patient.

(2) The relevant order shall cease to authorise the measures specified in it for the period during which the patient is subject to the assessment order or, as the case may be, treatment order.

(4) In this section, a "relevant order" means—

(a) an interim compulsory treatment order made under section 65(2) of the 2003 Act; and

(b) a compulsory treatment order made under section 64(4)(a) of that Act.**]**

Interim hospital orders

53 Interim hospital orders.

(1) Where, in the case of a person to whom this section applies the court is satisfied on the written or oral evidence of two medical practitioners (complying with subsection (2) below and section 61 of this Act)—

(a) that the offender is suffering from mental disorder within the meaning of section 1(2) of the [M32]Mental Health (Scotland) Act 1984; and

(b) that there is reason to suppose—

(i) that the mental disorder from which the offender is suffering is such that it may be appropriate for a hospital order to be made in his case; and

(ii) that, having regard to section 58(5) of this Act, the hospital to be specified in any such hospital order may be a State hospital,

the court may, before making a hospital order or dealing with the offender in some other way, make an order (to be known as "an interim hospital order") authorising his admission to and detention in a state hospital or such other hospital as for special reasons the court may specify in the order.

(2) Of the medical practitioners whose evidence is taken into account under subsection (1) above at least one shall be employed at the hospital which is to be specified in the order.

(3) An interim hospital order shall not be made in respect of an offender unless the court is satisfied that the hospital which is to be specified in the order, 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.

(4) Where a court makes an interim hospital order it shall not make any other order for detention or impose a fine or pass sentence of imprisonment or make a probation order or a community service order in respect of the offence, but may make any other order which it has power to make apart from this section.

(5) The court by which an interim hospital order is made may include in the order such direction as it thinks fit for the conveyance of the offender to a place of safety and his detention therein pending his admission to the hospital within the period of 28 days referred to in subsection (3) above.

(6) An interim hospital order—

(a) shall be in force for such period, not exceeding 12 weeks, as the court may specify when making the order; but

(b) may be renewed for further periods of not more than 28 days at a time if it appears to the court on the written or oral evidence of the responsible medical officer that the continuation of the order is warranted,

but no such order shall continue in force for more than six months in all and the court shall terminate the order if it makes a hospital order in respect of the offender or decides, after considering the written or oral evidence of the responsible medical officer, to deal with the offender in some other way.

(7) An interim hospital order may be renewed under subsection (6) above without the offender being brought before the court if he is represented by counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.

(8) If an offender absconds from a hospital in which he is detained in pursuance of an interim hospital order, or while being conveyed to or from such a hospital, he may be arrested without warrant by a constable and shall, after being arrested, be brought as soon as practicable before the court which made the order; and the court may thereupon terminate the order and deal with him in any way in which it could have dealt with him if no such order had been made.

(9) When an interim hospital order ceases to have effect in relation to an offender the court may deal with him in any way (other than by making a new interim hospital order) in which it could have dealt with him if no such order had been made.

(10) The power conferred on the court by this section is without prejudice to the power of the court under section 200(1) of this Act to remand a person in order that an inquiry may be made into his physical or mental condition.

(11) This section applies to any person—

(a) convicted in the High Court or the sheriff court of an offence punishable with imprisonment (other than an offence the sentence for which is fixed by law);

(b) charged on complaint in the sheriff court if the sheriff is satisfied that he did the act or made the omission charged but does not convict him; or

(c) remitted to the sheriff court from the district court under section 58(10) of this Act if the sheriff is satisfied as mentioned in paragraph (b) above.

(12) In this section "the court" means—

(a) the High Court, as regards a person—

(i) convicted on indictment in that court; or

(ii) convicted on indictment in the sheriff court and remitted for sentence to the High Court; and

(b) the sheriff court, as regards a person—

(i) convicted in the sheriff court and not remitted as mentioned in paragraph (a)(ii) above; or

(ii) referred to in paragraph (b) or (c) of subsection (11) above.

Marginal Citations

M32 1984 c.36.

VALID FROM 05/10/2005

[F50 53A Interim compulsion order: supplementary

(1) If, before the expiry of the period of 7 days beginning with the day on which the interim compulsion order is made, it appears to the court, or, as the case may be, the Scottish Ministers, that, by reason of emergency or other special circumstances, it is not reasonably practicable for the offender to be admitted to the hospital specified in the order, the court, or, as the case may be, the Scottish Ministers, may direct that the offender be admitted to the hospital specified in the direction.

(2) Where—

(a) the court makes a direction under subsection (1) above, it shall, as soon as reasonably practicable after making the direction, inform the person having custody of the offender; and

(b) the Scottish Ministers make such a direction, they shall, as soon as reasonably practicable after making the direction, inform—

(i) the court; and

(ii) the person having custody of the offender.

(3) Where a direction is made under subsection (1) above, the interim compulsion order shall have effect as if the hospital specified in the direction were the hospital specified in the order.

(4) In this section, "court" means the court which made the interim compulsion order.**]**

Textual Amendments

F50 Ss. 53-53D and cross-heading substituted (5.10.2005) for s. 53 and cross-heading by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), **ss. 131**, 333(1)-(4); S.S.I. 2005/161, **art. 3** (with savings for s. 53 by virtue of S.S.I. 2005/452, art. 33(14))

VALID FROM 05/10/2005

[F51 53B Review and extension of interim compulsion order

(1) The responsible medical officer shall, before the expiry of the period specified by the court under section 53(8)(b) of this Act, submit a report in writing to the court—

(a) as to the matters mentioned in subsection (2) below; and

(b) as to any matters specified by the court under section 53(2) of this Act.

(2) The matters are—

(a) whether the conditions mentioned in section 53(5) of this Act are met in respect of the offender;

(b) the type (or types) of mental disorder that the offender has; and

(c) whether it is necessary to extend the interim compulsion order to allow further time for the assessment mentioned in section 53(3)(b) of this Act.

(3) The responsible medical officer shall, at the same time as such officer submits the report to the court, send a copy of such report to—

(a) the offender; and

(b) any solicitor acting for the offender.

(4) The court may, on receiving the report submitted under subsection (1) above, if satisfied that the extension of the order is necessary, extend the order for such period (not exceeding 12 weeks beginning with the day on which the order would cease to have effect were such an extension not made) as the court may specify.

(5) The court may extend an interim compulsion order under subsection (4) above for a period only if, by doing so, the total period for which the offender will be subject to the order does not exceed 12 months beginning with the day on which the order was first made.

(6) The court may, under subsection (4) above, extend an interim compulsion order in the absence of the offender only if—

(a) the offender is represented by counsel or a solicitor;

(b) that counsel or solicitor is given an opportunity of being heard; and

(c) the court is satisfied that it is—

(i) impracticable; or

(ii) inappropriate,

for the offender to be brought before it.

(7) Subsections (1) to (9) of this section shall apply for the purposes of an interim compulsion order extended under subsection (4) above as they apply for the purposes of an interim compulsion order, references in those subsections to the period specified by the court under section 53(8)(b) of this Act being construed as references to the period specified by the court under subsection (4) above.

(8) Where a report is submitted under subsection (1) above, the court may, before the expiry of the period specified by the court under section 53(8)(b) of this Act—

(a) revoke the interim compulsion order and make one of the disposals mentioned in section 53(6) of this Act; or

(b) revoke the interim compulsion order and deal with the offender in any way (other than by making an interim compulsion order) in which the court could have dealt with the offender if no such order had been made.

(9) In this section—

"court" means the court which made the interim compulsion order; and

"responsible medical officer" means the responsible medical officer appointed in respect of the offender under section 230 of the Mental Health (Care and Treatment)(Scotland) Act 2003 (asp 13).**]**

Textual Amendments

F51 Ss. 53-53D and cross-heading substituted (5.10.2005) for s. 53 and cross-heading by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), **ss. 131**, 333(1)-(4); S.S.I. 2005/161, **art. 3** (with savings for s. 53 by virtue of S.S.I. 2005/452, art. 33(14))

VALID FROM 05/10/2005

[F52 53C Early termination of interim compulsion order

(1) An interim compulsion order shall cease to have effect if the court—

(a) makes a compulsion order in relation to the offender;

(b) makes a hospital direction in relation to the offender; or

(c) deals with the offender in some other way, including the imposing of a sentence of imprisonment on the offender.

(2) In this section, "court" means the court which made the interim compulsion order.**]**

Textual Amendments

F52 Ss. 53-53D and cross-heading substituted (5.10.2005) for s. 53 and cross-heading by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), **ss. 131**, 333(1)-(4); S.S.I. 2005/161, **art. 3** (with savings for s. 53 by virtue of S.S.I. 2005/452, art. 33(14))

VALID FROM 05/10/2005

[F53 53D Power of court on interim compulsion order ceasing to have effect

(1) Where, otherwise than by virtue of section 53B(8) or 53C of this Act, an interim compulsion order ceases to have effect the court may deal with the offender who was subject to the order in any way (other than the making of a new interim compulsion order) in which it could have dealt with the offender if no such order had been made.

(2) In this section, "court" means the court which made the interim compulsion order.**]**

Textual Amendments

F53 Ss. 53-53D and cross-heading substituted (5.10.2005) for s. 53 and cross-heading by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), **ss. 131**, 333(1)-(4); S.S.I. 2005/161, **art. 3** (with savings for s. 53 by virtue of S.S.I. 2005/452, art. 33(14))

VALID FROM 25/06/2012

[F54 Acquittal involving mental disorder

Textual Amendments

F54 S. 53E and cross-heading inserted (with application in accordance with art. 3 of the commencing S.S.I.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 169**, 206(1); S.S.I. 2012/160, art. 3, sch.

53E Acquittal involving mental disorder

(1) Where the prosecutor accepts a plea (by the person charged with the commission of an offence) of the special defence set out in section 51A of this Act, the court must declare that the person is acquitted by reason of the special defence.

(2) Subsection (3) below applies where—

(a) the prosecutor does not accept such a plea, and

(b) evidence tending to establish the special defence set out in section 51A of this Act is brought before the court.

(3) Where this subsection applies the court is to—

(a) in proceedings on indictment, direct the jury to find whether the special defence has been established and, if they find that it has, to declare whether the person is acquitted on that ground,

(b) in summary proceedings, state whether the special defence has been established and, if it states that it has, declare whether the person is acquitted on that ground.**]**

VALID FROM 25/06/2012

[F55 Unfitness for trial

Textual Amendments

F55 S. 53F and preceding cross-heading inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 170(1)**, 206(1)

53F Unfitness for trial

(1) A person is unfit for trial if it is established on the balance of probabilities that the person is incapable, by reason of a mental or physical condition, of participating effectively in a trial.

(2) In determining whether a person is unfit for trial the court is to have regard to—

(a) the ability of the person to—

(i) understand the nature of the charge,

(ii) understand the requirement to tender a plea to the charge and the effect of such a plea,

(iii) understand the purpose of, and follow the course of, the trial,

(iv) understand the evidence that may be given against the person,

(v) instruct and otherwise communicate with the person's legal representative, and

(b) any other factor which the court considers relevant.

(3) The court is not to find that a person is unfit for trial by reason only of the person being unable to recall whether the event which forms the basis of the charge occurred in the manner described in the charge.

(4) In this section "the court" means—

(a) as regards a person charged on indictment, the High Court or the sheriff court,

(b) as regards a person charged summarily, the sheriff court.**]**

Insanity in bar of trial

54 Insanity in bar of trial.

(1) Where the court is satisfied, on the written or oral evidence of two medical practitioners, that a person charged with the commission of an offence is insane so that his trial cannot proceed or, if it has commenced, cannot continue, the court shall, subject to subsection (2) below—

(a) make a finding to that effect and state the reasons for that finding;

(b) discharge the trial diet and order that a diet (in this Act referred to as an "an examination of facts") be held under section 55 of this Act; and

(c) remand the person in custody or on bail or, where the court is satisfied—

(i) on the written or oral evidence of two medical practitioners, that he is suffering from mental disorder of a nature or degree which warrants his admission to hospital under Part V of the [M33]Mental Health (Scotland) Act 1984; and

(ii) that a hospital is available for his admission and suitable for his detention,

make an order (in this section referred to as a "temporary hospital order") committing him to that hospital until the conclusion of the examination of facts.

(2) Subsection (1) above is without prejudice to the power of the court, on an application by the prosecutor, to desert the diet*pro loco et tempore*.

(3) The court may, before making a finding under subsection (1) above as to the insanity of a person, adjourn the case in order that investigation of his mental condition may be carried out.

(4) The court which made a temporary hospital order may, at any time while the order is in force, review the order on the ground that there has been a change of circumstances since the order was made and, on such review—

(a) where the court considers that such an order is no longer required in relation to a person, it shall revoke the order and may remand him in custody or on bail;

(b) in any other case, the court may—

(i) confirm or vary the order; or

(ii) revoke the order and make such other order, under subsection (1) (c) above or any other provision of this Act, as the court considers appropriate.

(5) 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.

(6) Where evidence is brought before the court that the accused was insane at the time of doing the act or making the omission constituting the offence with which he is charged and he is acquitted, the court shall—

(a) in proceedings on indictment, direct the jury to find; or

(b) in summary proceedings, state,

whether the accused was insane at such time as aforesaid, and, if so, to declare whether he was acquitted on account of his insanity at that time.

(7) It shall not be competent for a person charged summarily in the sheriff court to found on a plea of insanity standing in bar of trial unless, before the first witness for the prosecution is sworn, he gives notice to the prosecutor of the plea and of the witnesses by whom he proposes to maintain it; and where such notice is given, the court shall, if the prosecutor so moves, adjourn the case.

(8) In this section, "the court" means—

(a) as regards a person charged on indictment, the High Court or the sheriff court;

(b) as regards a person charged summarily, the sheriff court.

Marginal Citations
M33 1984 c.36.

Examination of facts

55 Examination of facts.

(1) At an examination of facts ordered under section 54(1)(b) of this Act the court shall, on the basis of the evidence (if any) already given in the trial and such evidence, or further evidence, as may be led by either party, determine whether it is satisfied—

(a) beyond reasonable doubt, as respects any charge on the indictment or, as the case may be, the complaint in respect of which the accused was being or was to be tried, that he did the act or made the omission constituting the offence; and

(b) on the balance of probabilities, that there are no grounds for acquitting him.

(2) Where the court is satisfied as mentioned in subsection (1) above, it shall make a finding to that effect.

(3) Where the court is not so satisfied it shall, subject to subsection (4) below, acquit the person of the charge.

(4) Where, as respects a person acquitted under subsection (3) above, the court is satisfied as to the matter mentioned in subsection (1)(a) above but it appears to the court that the person was insane at the time of doing the act or making the omission constituting the offence, the court shall state whether the acquittal is on the ground of such insanity.

(5) Where it appears to the court that it is not practical or appropriate for the accused to attend an examination of facts the court may, if no objection is taken by or on behalf of the accused, order that the examination of facts shall proceed in his absence.

(6) Subject to the provisions of this section, section 56 of this Act and any Act of Adjournal the rules of evidence and procedure and the powers of the court shall, in

respect of an examination of facts, be as nearly as possible those applicable in respect of a trial.

(7) For the purposes of the application to an examination of facts of the rules and powers mentioned in subsection (6) above, an examination of facts—

(a) commences when the indictment or, as the case may be, complaint is called; and

(b) concludes when the court—

(i) acquits the person under subsection (3) above;

(ii) makes an order under subsection (2) of section 57 of this Act; or

(iii) decides, under paragraph (e) of that subsection, not to make an order.

56 Examination of facts: supplementary provisions.

(1) An examination of facts ordered under section 54(1)(b) of this Act may, where the order is made at the trial diet, be held immediately following the making of the order and, where it is so held, the citation of the accused and any witness to the trial diet shall be a valid citation to the examination of facts.

(2) Where an examination of facts is ordered in connection with proceedings on indictment, a warrant for citation of an accused and witnesses under section 66(1) of this Act shall be sufficient warrant for citation to an examination of facts.

(3) Where an accused person is not legally represented at an examination of facts the court shall appoint counsel or a solicitor to represent his interests.

(4) The court may, on the motion of the prosecutor and after hearing the accused, order that the examination of facts shall proceed in relation to a particular charge, or particular charges, in the indictment or, as the case may be, complaint in priority to other such charges.

(5) The court may, on the motion of the prosecutor and after hearing the accused, at any time desert the examination of facts *pro loco et tempore* as respects either the whole indictment or, as the case may be, complaint or any charge therein.

(6) Where, and to the extent that, an examination of facts has, under subsection (5) above, been deserted *pro loco et tempore*—

(a) in the case of proceedings on indictment, the Lord Advocate may, at any time, raise and insist in a new indictment; or

(b) in the case of summary proceedings, the prosecutor may at any time raise a fresh libel,

notwithstanding any time limit which would otherwise apply in respect of prosecution of the alleged offence.

(7) If, in a case where a court has made a finding under subsection (2) of section 55 of this Act, a person is subsequently charged, whether on indictment or on a complaint, with an offence arising out of the same act or omission as is referred to in subsection (1) of that section, any order made under section 57(2) of this Act shall, with effect from the commencement of the later proceedings, cease to have effect.

(8) For the purposes of subsection (7) above, the later proceedings are commenced when the indictment or, as the case may be, the complaint is served.

Disposal in case of insanity

57 Disposal of case where accused found to be insane.

(1) This section applies where—

(a) a person is, by virtue of section 54(6) or 55(3) of this Act, acquitted on the ground of his insanity at the time of the act or omission; or

(b) following an examination of facts under section 55, a court makes a finding under subsection (2) of that section.

(2) Subject to subsection (3) below, where this section applies the court may, as it thinks fit—

(a) make an order (which shall have the same effect as a hospital order) that the person be detained in such hospital as the court may specify;

(b) in addition to making an order under paragraph (a) above, make an order (which shall have the same effect as a restriction order) that the person shall, without limit of time, be subject to the special restrictions set out in section 62(1) of the [M34]Mental Health (Scotland) Act 1984;

(c) make an order (which shall have the same effect as a guardianship order) placing the person under the guardianship of a local authority or of a person approved by a local authority;

(d) make a supervision and treatment order (within the meaning of paragraph 1(1) of Schedule 4 to this Act); or

(e) make no order.

(3) Where the offence with which the person was charged is murder, the court shall make orders under both paragraphs (a) and (b) of subsection (2) above in respect of that person.

(4) Sections 58(1), (2) and (4) to (7) and 59 and 61 of this Act shall have effect in relation to the making, terms and effect of an order under paragraph (a), (b) or (c) of subsection (2) above as those provisions have effect in relation to the making, terms and effect of, respectively, a hospital order, a restriction order and a guardianship order as respects a person convicted of an offence, other than an offence the sentence for which is fixed by law, punishable by imprisonment.

(5) Schedule 4 to this Act shall have effect as regards supervision and treatment orders.

Modifications etc. (not altering text)

C11 S. 57(2)(a) extended (1.1.1998) by 1997 c. 48, **s. 9(1)(a)** (subject to s. 9(2)); S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)

Marginal Citations

M34 1984 c.36.

VALID FROM 21/03/2005

[F56 Compulsion orders

Textual Amendments

F56 Ss. 57A-57D and cross-heading inserted (21.3.2005 for certain purposes and otherwise 5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), **ss. 133**, 333(1)-(4); S.S.I. 2005/161, **arts. 2**, **3**, Sch. 1 (as amended (27.9.2005) by S.S.I. 2005/465, art. 2, **Sch. 1 para. 32(14)**)

57A Compulsion order

(1) This section applies where a person (in this section and in sections 57B to 57D of this Act, referred to as the "offender")—

(a) is convicted in the High Court or the sheriff court of an offence punishable by imprisonment (other than an offence the sentence for which is fixed by law); or

(b) is remitted to the High Court by the sheriff under any enactment for sentence for such an offence.

(2) If the court is satisfied—

(a) on the written or oral evidence of two medical practitioners, that the conditions mentioned in subsection (3) below are met in respect of the offender; and

(b) that, having regard to the matters mentioned in subsection (4) below, it is appropriate,

it may, subject to subsection (5) below, make an order (in this Act referred to as a "compulsion order") authorising, subject to subsection (7) below, for the period of 6 months beginning with the day on which the order is made such of the measures mentioned in subsection (8) below as may be specified in the order.

(3) The conditions referred to in subsection (2)(a) above are—

(a) that the offender has a mental disorder;

(b) that medical treatment which would be likely to—

(i) prevent the mental disorder worsening; or

(ii) alleviate any of the symptoms, or effects, of the disorder,

is available for the offender;

(c) that if the offender were not provided with such medical treatment there would be a significant risk—

(i) to the health, safety or welfare of the offender; or

(ii) to the safety of any other person; and

(d) that the making of a compulsion order in respect of the offender is necessary.

(4) The matters referred to in subsection (2)(b) above are—

(a) the mental health officer's report, prepared in accordance with section 57C of this Act, in respect of the offender;

(b) all the circumstances, including—

(i) the nature of the offence of which the offender was convicted; and

(ii) the antecedents of the offender; and

(c) any alternative means of dealing with the offender.

(5) The court may, subject to subsection (6) below, make a compulsion order authorising the detention of the offender in a hospital by virtue of subsection (8)(a) below only if satisfied, on the written or oral evidence of the two medical practitioners mentioned in subsection (2)(a) above, that—

(a) the medical treatment mentioned in subsection (3)(b) above can be provided only if the offender is detained in hospital;

(b) the offender could be admitted to the hospital to be specified in the order before the expiry of the period of 7 days beginning with the day on which the order is made; and

(c) the hospital to be so specified is suitable for the purpose of giving the medical treatment to the offender.

(6) A compulsion order may authorise detention in a state hospital only if, on the written or oral evidence of the two medical practitioners mentioned in subsection (2)(a) above, it appears to the court—

(a) that the offender requires to be detained in hospital under conditions of special security; and

(b) that such conditions of special security can be provided only in a state hospital.

(7) Where the court—

(a) makes a compulsion order in respect of an offender; and

(b) also makes a restriction order in respect of the offender,

the compulsion order shall authorise the measures specified in it without limitation of time.

(8) The measures mentioned in subsection (2) above are—

(a) the detention of the offender in the specified hospital;

(b) the giving to the offender, in accordance with Part 16 of the Mental Health (Care and Treatment)(Scotland) Act 2003 (asp 13), of medical treatment;

(c) the imposition of a requirement on the offender to attend—

(i) on specified or directed dates; or

(ii) at specified or directed intervals,

specified or directed places with a view to receiving medical treatment;

(d) the imposition of a requirement on the offender to attend—

(i) on specified or directed dates; or

(ii) at specified or directed intervals,

specified or directed places with a view to receiving community care services, relevant services or any treatment, care or service;

(e) subject to subsection (9) below, the imposition of a requirement on the offender to reside at a specified place;

(f) the imposition of a requirement on the offender to allow—

(i) the mental health officer;

(ii) the offender's responsible medical officer; or

(iii) any person responsible for providing medical treatment, community care services, relevant services or any treatment, care or service to

the offender who is authorised for the purposes of this paragraph by the offender's responsible medical officer,

to visit the offender in the place where the offender resides;

(g) the imposition of a requirement on the offender to obtain the approval of the mental health officer to any change of address; and

(h) the imposition of a requirement on the offender to inform the mental health officer of any change of address before the change takes effect.

(9) The court may make a compulsion order imposing, by virtue of subsection (8)(e) above, a requirement on an offender to reside at a specified place which is a place used for the purpose of providing a care home service only if the court is satisfied that the person providing the care home service is willing to receive the offender.

(10) The Scottish Ministers may, by regulations made by statutory instrument, make provision for measures prescribed by the regulations to be treated as included among the measures mentioned in subsection (8) above.

(11) The power conferred by subsection (10) above may be exercised so as to make different provision for different cases or descriptions of case or for different purposes.

(12) No regulations shall be made under subsection (10) above unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Scottish Parliament.

(13) The court shall be satisfied as to the condition mentioned in subsection (3)(a) above only if the description of the offender's mental disorder by each of the medical practitioners mentioned in subsection (2)(a) above specifies, by reference to the appropriate paragraph (or paragraphs) of the definition of "mental disorder" in section 328(1) of the Mental Health (Care and Treatment)(Scotland) Act 2003 (asp 13), at least one type of mental disorder that the offender has that is also specified by the other.

(14) A compulsion order—

(a) shall specify—

(i) by reference to the appropriate paragraph (or paragraphs) of the definition of "mental disorder" in section 328(1) of the Mental Health (Care and Treatment)(Scotland) Act 2003 (asp 13), the type (or types) of mental disorder that each of the medical practitioners mentioned in subsection (2)(a) above specifies that the offender has that is also specified by the other; and

(ii) if the order does not, by virtue of subsection (8)(a) above, authorise the detention of the offender in hospital, the name of the hospital the managers of which are to have responsibility for appointing the offender's responsible medical officer; and

(b) may include—

(i) in a case where a compulsion order authorises the detention of the offender in a specified hospital by virtue of subsection (8)(a) above; or

(ii) in a case where a compulsion order imposes a requirement on the offender to reside at a specified place by virtue of subsection (8)(e) above,

such directions as the court thinks fit for the removal of the offender to, and the detention of the offender in, a place of safety pending the offender's admission to the specified hospital or, as the case may be, place.

(15) Where the court makes a compulsion order in relation to an offender, the court—

(a) shall not—

(i) make an order under section 200 of this Act;

(ii) make an interim compulsion order;

(iii) make a guardianship order;

(iv) pass a sentence of imprisonment;

(v) impose a fine;

(vi) make a probation order; or

(vii) make a community service order,

in relation to the offender;

(b) may make any other order that the court has power to make apart from this section.

(16) In this section—

"care home service" has the meaning given by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8);

"community care services" has the meaning given by section 5A(4) of the Social Work (Scotland) Act 1968 (c. 49);

"medical treatment" has the same meaning as in section 52D of this Act;

"relevant services" has the meaning given by section 19(2) of the Children (Scotland) Act 1995 (c. 36);

"responsible medical officer", in relation to an offender, means the responsible medical officer appointed in respect of the offender under section 230 of the Mental Health (Care and Treatment)(Scotland) Act 2003 (asp 13);

"restriction order" means an order under section 59 of this Act;

"sentence of imprisonment" includes any sentence or order for detention; and

"specified" means specified in the compulsion order.

57B Compulsion order authorising detention in hospital or requiring residence at place: ancillary provision

(1) Where a compulsion order—

(a) authorises the detention of an offender in a specified hospital; or

(b) imposes a requirement on an offender to reside at a specified place,

this section authorises the removal, before the expiry of the period of 7 days beginning with the day on which the order is made, of the offender to the specified hospital or place, by any of the persons mentioned in subsection (2) below.

(2) Those persons are—

(a) a constable;

(b) a person employed in, or contracted to provide services in or to, the specified hospital who is authorised by the managers of that hospital to remove persons to hospital for the purposes of this section; and

(c) a specified person.

(3) In this section, "specified" means specified in the compulsion order.

57C Mental health officer's report

(1) This section applies where the court is considering making a compulsion order in relation to an offender under section 57A of this Act.

(2) If directed to do so by the court, the mental health officer shall—
(a) subject to subsection (3) below, interview the offender; and
(b) prepare a report in relation to the offender in accordance with subsection (4) below.

(3) If it is impracticable for the mental health officer to comply with the requirement in subsection (2)(a) above, the mental health officer need not do so.

(4) The report shall state—
(a) the name and address of the offender;
(b) if known by the mental health officer, the name and address of the offender's primary carer;
(c) in so far as relevant for the purposes of section 57A of this Act, details of the personal circumstances of the offender; and
(d) any other information that the mental health officer considers relevant for the purposes of that section.

(5) In this section—

"carer", and "primary", in relation to a carer, have the meanings given by section 329(1) of the Mental Health (Care and Treatment)(Scotland) Act 2003 (asp 13);

"mental health officer" means a person appointed (or deemed to be appointed) under section 32(1) of that Act; and

"named person" has the meaning given by section 329(1) of that Act.

57D Compulsion order: supplementary

(1) If, before the expiry of the period of 7 days beginning with the day on which a compulsion order authorising detention of the offender in a hospital is made, it appears to the court, or, as the case may be, the Scottish Ministers, that, by reason of emergency or other special circumstances, it is not reasonably practicable for the offender to be admitted to the hospital specified in the order, the court, or, as the case may be, the Scottish Ministers, may direct that the offender be admitted to the hospital specified in the direction.

(2) Where—
(a) the court makes a direction under subsection (1) above, it shall inform the person having custody of the offender; and
(b) the Scottish Ministers make such a direction, they shall inform—
(i) the court; and
(ii) the person having custody of the offender.

(3) Where a direction is made under subsection (1) above, the compulsion order shall have effect as if the hospital specified in the direction were the hospital specified in the order.

(4) In this section, "court" means the court which made the compulsion order.**]**

Modifications etc. (not altering text)

C12 S. 57D(1) modified (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Transitional and Savings Provisions) Order 2005 (S.S.I. 2005/452), **art. 9(5)**

Hospital orders and guardianship

58 Order for hospital admission or guardianship.

(1) Where a person is convicted in the High Court or 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 section 61 of this Act) that the grounds set out in—

(i) section 17(1); or, as the case may be

(ii) section 36(a),

of the Mental Health (Scotland) Act 1984 apply in relation to the offender;

(b) the court is of the 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,

subject to subsection (2) below, 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 the case is remitted by the sheriff to the High Court for sentence under any enactment, the power to make an order under subsection (1) above shall be exercisable by that court.

(3) Where in the case of a person charged summarily in the sheriff court with an act or omission constituting an offence the court would have power, on convicting him, to make an order under subsection (1) above, 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) 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) above 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.

(5) 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) above, 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.

(6) 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—

(a) after taking into consideration the evidence of a mental health officer, that it is necessary in the interests of the welfare of the person that he should be placed under guardianship; and

(b) that that authority or person is willing to receive that person into guardianship.

(7) A hospital order or guardianship order shall specify the form of mental disorder, being mental illness or mental handicap or both, from which, upon the evidence taken into account under paragraph (a) of subsection (1) above, 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.

(8) 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 or a community service 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.

(9) 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 subsection (4) above; but a direction for the conveyance of a patient to a residential establishment shall not be given unless the court is satisfied that the authority is willing to receive the patient therein.

(10) Where a person is charged before the district court with an act or omission constituting an offence punishable with imprisonment, the district 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 7(9) and (10) 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) above 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 district court.

Modifications etc. (not altering text)

C13 S. 58 extended (1.1.1998) by 1997 c. 48, **s. 9(1)(b)** (subject to s. 9(2)); S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)

VALID FROM 01/04/2002

[F57 58A Application of Adults with Incapacity (Scotland) Act 2000

(1) Subject to the provisions of this section, the provisions of Parts 1, 5, 6 and 7 of the Adults with Incapacity (Scotland) Act 2000 (asp 4) ("the 2000 Act") apply—

(a) to a guardian appointed by an order of the court under section 57(2)(c), 58(1) or 58(1A) of this Act (in this section referred to as a "guardianship order") whether appointed before or after the coming into force of these provisions, as they apply to a guardian with powers relating to the personal welfare of an adult appointed under section 58 of that Act;

(b) to a person authorised under an intervention order under section **[**F58 60B**]** of this Act as they apply to a person so authorised under section 53 of that Act.

(2) In making a guardianship order the court shall have regard to any regulations made by the Scottish Ministers under section 64(11) of the 2000 Act and—

(a) shall confer powers, which it shall specify in the order, relating only to the personal welfare of the person;

(b) may appoint a joint guardian;

(c) may appoint a substitute guardian;

(d) may make such consequential or ancillary order, provision or direction as it considers appropriate.

(3) Without prejudice to the generality of subsection (2), or to any other powers conferred by this Act, the court may—

(a) make any order granted by it subject to such conditions and restrictions as appear to it to be appropriate;

(b) order that any reports relating to the person who will be the subject of the order be lodged with the court or that the person be assessed or interviewed and that a report of such assessment or interview be lodged;

(c) make such further inquiry or call for such further information as appears to it to be appropriate;

(d) make such interim order as appears to it to be appropriate pending the disposal of the proceedings.

(4) Where the court makes a guardianship order it shall forthwith send a copy of the interlocutor containing the order to the Public Guardian who shall—

(a) enter prescribed particulars of the appointment in the register maintained by him under section 6(2)(b)(iv) of the 2000 Act;

(b) unless he considers that the notification would be likely to pose a serious risk to the person's health notify the person of the appointment of the guardian; and

(c) notify the local authority and the Mental Welfare Commission of the terms of the interlocutor.

(5) A guardianship order shall continue in force for a period of 3 years or such other period (including an indefinite period) as, on cause shown, the court may determine.

(6) Where any proceedings for the appointment of a guardian under section 57(2)(c) or 58(1) of this Act have been commenced and not determined before the date of coming into force of section 84 of, and paragraph 26 of schedule 5 to, the Adults

with Incapacity (Scotland) Act 2000 (asp 4) they shall be determined in accordance with this Act as it was immediately in force before that date.**]**

Textual Amendments

F57 S. 58A inserted (1.4.2002) by 2000 asp 4, **s. 84(2)**; S.S.I. 2001/81, art. 3, **Sch. 2**

F58 S. 58A: "In section 84 (applications to guardians appointed under Criminal Procedure (Scotland) Act 1995 (c. 46), in subsection (1)(b) of the section prospectively inserted by subsection (2), for the words "60A" there is substituted "60B"" (1.4.2002) by virtue of 2001 asp 8, s. 79, Sch. 3 para. 23(5); S.S.I. 2002/162, **art. 2(h)** (subject to arts. 3-13)

59 Hospital orders: restrictions on discharge.

(1) Where a hospital order is made in respect of a person, and it appears to the court—

(a) having regard to the nature of the offence with which he is charged;

(b) the antecedents of the person; and

(c) 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 from serious harm 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 62(1) of the [M35]Mental Health (Scotland) Act 1984, without limit of time.

(2) An order under this section (in this Act referred to as "a restriction order") shall not be made in the case of any person unless the medical practitioner approved by the Health Board for the purposes of section 20 or section 39 of the Mental Health (Scotland) Act 1984, whose evidence is taken into account by the court under section 58(1)(a) of this Act, has given evidence orally before the court.

(3) Where a restriction order is in force in respect of a patient, 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 60(3) of the Mental Health (Scotland) Act 1984 on the making of another hospital order, that order shall have the same effect in relation to the restriction order as the previous hospital order, but without prejudice to the power of the court making that other hospital order to make another restriction order to have effect on the expiration of the previous such order.

Marginal Citations

M35 1984 c.36.

VALID FROM 01/01/1998

[F59 59A Hospital directions.

(1) Subject to subsection (2) and (3) below, where a person is convicted on indictment in the High Court or in the sheriff court of an offence punishable by imprisonment, the court may, in addition to any sentence of imprisonment which it has the power or the duty to impose, by a direction under this subsection (in this Act referred to as

a "hospital direction") authorise his admission to and detention in such hospital as may be specified in the direction.

(2) Subsection (1) above shall not apply where the person convicted is a child.

(3) A hospital direction shall not be made unless—

(a) the court is satisfied on the written or oral evidence of two medical practitioners (complying with section 61 of this Act) that the grounds set out in section 17(1) of the [M36]Mental Health (Scotland) Act 1984 apply in relation to the offender;

(b) the medical practitioners mentioned in paragraph (a) above each describe the person as suffering from the same form of mental disorder, being mental illness or mental handicap, whether or not he is also described by either of them as suffering from the other form; and

(c) the court is satisfied that the hospital to be specified in the direction can admit the person in respect of whom it is to be made within 7 days of the direction being made.

(4) A State hospital shall not be specified in a hospital direction 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 paragraphs (a) and (b) of subsection (3) above, that the person—

(a) on account of his dangerous violent or criminal propensities requires treatment under conditions of special security; and

(b) cannot suitably be cared for in a hospital other than a State hospital.

(5) A hospital direction shall specify the form of mental disorder from which, upon the evidence taken into account under paragraphs (a) and (b) of subsection (3) above, the person in respect of whom it is made is found to be suffering.

(6) The court by which a hospital direction is made may give such additional directions as it thinks fit for the conveyance of the person in respect of whom it is made to a place of safety and for his detention in that place pending his admission to hospital within the period mentioned in paragraph (c) of subsection (3) above.

(7) The court shall not make an additional direction under subsection (6) above directing the conveyance of the person concerned to a place of safety which is a residential establishment unless it is satisfied that the managers of that establishment are willing to receive him in the establishment.**]**

Textual Amendments

F59 S. 59A inserted (1.1.1998) by 1997 c. 48, **s. 6(1)**; S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)

Modifications etc. (not altering text)

C14 S. 59A extended (1.1.1998) by 1997 c. 48, **s. 9(1)(c)** (subject to s. 9(2)); S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)

Marginal Citations

M36 1984 c.36.

60 Appeals against hospital orders.

Where a hospital order, interim hospital order (but not a renewal thereof), guardianship order or a restriction order 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 (or, where an interim hospital order has been made, to any right of appeal against any other order or sentence which may be imposed), appeal against that order in the same manner as against sentence.

VALID FROM 01/01/1998

[F60 60A Appeal by prosecutor against hospital orders etc.

(1) This section applies where the court, in respect of a person charged or brought before it, has made—

(a) an order under any of paragraphs (a) to (d) of subsection (2) of section 57 of this Act or such a decision as is mentioned in paragraph (e) of that subsection; or

(b) a hospital order, guardianship order, restriction order or a hospital direction.

(2) Where this section applies, the prosecutor may appeal against any such order, decision or direction as is mentioned in subsection (1) above—

(a) if it appears to him that the order, decision or direction was inappropriate; or

(b) on a point of law,

and an appeal under this section shall be treated in the same manner as an appeal against sentence under section 108 of this Act.**]**

Textual Amendments

F60 S. 60A inserted (1.1.1998) by 1997 c. 48, **s. 22**; S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)

VALID FROM 01/04/2002

60B Intervention orders

The court may instead of making a hospital order under section 58(1) of this Act or a guardianship order under section 57(2)(c) or 58(1A) of this Act, make an intervention order(as defined in section 53(1) of the Adults with Incapacity (Scotland) Act 2000 (asp 4) where it considers that it would be appropriate to do so.

VALID FROM 21/03/2005

60C Acquitted persons: detention for medical examination

(1) Subject to subsection (7) below, this section applies where a person charged with an offence is acquitted.

(2) If the court by or before which the person is acquitted is satisfied—

(a) on the written or oral evidence of two medical practitioners that the conditions mentioned in subsection (3) below are met in respect of the person; and

(b) that it is not practicable to secure the immediate examination of the person by a medical practitioner,

the court may, immediately after the person is acquitted, make an order authorising the measures mentioned in subsection (4) below for the purpose of enabling arrangements to be made for a medical practitioner to carry out a medical examination of the person.

(3) The conditions referred to in subsection (2)(a) above are—

(a) that the person has a mental disorder;

(b) that medical treatment which would be likely to—

(i) prevent the mental disorder worsening; or

(ii) alleviate any of the symptoms, or effects, of the disorder,

is available for the person; and

(c) that if the person were not provided with such medical treatment there would be a significant risk—

(i) to the health, safety or welfare of the person; or

(ii) to the safety of any other person.

(4) The measures referred to in subsection (2) above are—

(a) the removal of the person to a place of safety by—

(i) a constable; or

(ii) a person specified by the court; and

(b) the detention, subject to subsection (6) below, of the person in that place of safety for a period of 6 hours beginning with the time at which the order under subsection (2) above is made.

(5) If the person absconds—

(a) while being removed to a place of safety under subsection (4) above; or

(b) from the place of safety,

a constable or the person specified by the court under paragraph (a) of that subsection may, at any time during the period mentioned in paragraph (b) of that subsection, take the person into custody and remove the person to a place of safety.

(6) An order under this section ceases to authorise detention of a person if, following the medical examination of the person, a medical practitioner grants—

(a) an emergency detention certificate under section 36 of the Mental Health (Care and Treatment)(Scotland) Act 2003 (asp 13); or

(b) a short-term detention certificate under section 44 of that Act.

(7) This section does not apply—

(a) in a case where a declaration is made by virtue of section 54(6) of this Act that the person is acquitted on account of the person's insanity at the time of doing the act or making the omission constituting the offence with which the person was charged; or

(b) in a case where the court states under section 55(4) of this Act that the person is so acquitted on the ground of such insanity.

(8) In this section, "medical treatment" has the same meaning as in section 52D of this Act.

VALID FROM 21/03/2005

60D Notification of detention under section 60C

(1) This section applies where a person has been removed to a place of safety under section 60C of this Act.

(2) The court shall, before the expiry of the period of 14 days beginning with the day on which the order under section 60C(2) of this Act is made, ensure that the Mental Welfare Commission is given notice of the matters mentioned in subsection (3) below.

(3) Those matters are—

(a) the name and address of the person removed to the place of safety;

(b) the date on and time at which the person was so removed;

(c) the address of the place of safety;

(d) if the person is removed to a police station, the reason why the person was removed there; and

(e) any other matter that the Scottish Ministers may, by regulations made by statutory instrument, prescribe.

(4) The power conferred by subsection (3)(e) above may be exercised so as to make different provision for different cases or descriptions of case or for different purposes.

(5) A statutory instrument containing regulations under subsection (3)(e) above shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

VALID FROM 05/10/2005

[F61 Hospital directions]

Textual Amendments

F61 Ss. 59A-59C and preceding cross-heading substituted for s. 59A (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331(1), 333(1)-(4), **Sch. 4 para. 8(6)**; S.S.I. 2005/161, **art. 3**

[F62 59B Hospital direction: mental health officer's report

(1) This section applies where the court is considering making a hospital direction in relation to an offender under section 59A of this Act.

(2) If directed to do so by the court, the mental health officer shall—

(a) subject to subsection (3) below, interview the offender; and

(b) prepare a report in relation to the offender in accordance with subsection (4) below.

(3) If it is impracticable for the mental health officer to comply with the requirement in subsection (2)(a) above, the mental health officer need not do so.

(4) The report shall state—

(a) the name and address of the offender;

(b) if known by the mental health officer, the name and address of the offender's primary carer;

(c) in so far as relevant for the purposes of section 59A of this Act, details of the personal circumstances of the offender; and

(d) any other information that the mental health officer considers relevant for the purposes of that section.

(5) In this section, "carer", "primary", in relation to a carer, and "mental health officer" have the same meanings as in section 57C of this Act.**]**

Textual Amendments

F62 Ss. 59A-59C and preceding cross heading substituted for s. 59A (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331(1), 333(1)-(4), **Sch. 4 para. 8(6)**; S.S.I. 2005/161, **art. 3**

[F63**59C Hospital direction: supplementary**

(1) If, before the expiry of the period of 7 days beginning with the day on which a hospital direction is made, it appears to the court, or, as the case may be, the Scottish Ministers, that, by reason of emergency or other special circumstances, it is not reasonably practicable for the offender to be admitted to the hospital specified in the hospital direction, the court, or, as the case may be, the Scottish Ministers, may direct that the offender be admitted to such other hospital as is specified.

(2) Where—

(a) the court makes a direction under subsection (1) above, it shall inform the person having custody of the offender; and

(b) the Scottish Ministers make such a direction, they shall inform—

(i) the court; and

(ii) the person having custody of the offender.

(3) Where a direction is made under subsection (1) above, the hospital direction shall have effect as if the hospital specified in the hospital direction were the hospital specified by the court, or, as the case may be, the Scottish Ministers, under subsection (1) above.

(4) In this section, "court" means the court which made the hospital direction.**]**

Textual Amendments

F63 Ss. 59A-59C and preceding cross heading substituted for s. 59A (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331(1), 333(1)-(4), **Sch. 4 para. 8(6)**; S.S.I. 2005/161, **art. 3**

Medical evidence

61 Requirements as to medical evidence.

(1) Of the medical practitioners whose evidence is taken into account under sections 53(1), 54(1) and 58(1)(a) of this Act, at least one shall be a practitioner approved for the purposes of section 20 or section 39 of the [M37]Mental Health (Scotland) Act 1984 by a Health Board as having special experience in the diagnosis or treatment of mental disorder.

(2) Written or oral evidence given for the purposes of the said section 58(1)(a) shall include a statement as to whether the person giving the evidence is related to the accused and of any pecuniary interest which that person may have in the admission of the accused to hospital or his reception into guardianship.

(3) For the purposes of the said sections 54(1) and 58(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.

(4) 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 the 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.

(5) 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 or, as respects a report for the purposes of the said section 54(1), remanded in custody for his examination by any medical practitioner, and any such examination may be made in private.

Marginal Citations

M37 1984 c.36.

Appeals under Part VI

62 Appeal by accused in case involving insanity.

(1) A person may appeal to the High Court against—

(a) a finding made under section 54(1) of this Act that he is insane so that his trial cannot proceed or continue, or the refusal of the court to make such a finding;

(b) a finding under section 55(2) of this Act; or

(c) an order made under section 57(2) of this Act.

(2) An appeal under subsection (1) above shall be—

(a) in writing; and

(b) lodged—

(i) in the case of an appeal under paragraph (a) of that subsection, not later than seven days after the date of the finding or refusal which is the subject of the appeal;

(ii) in the case of an appeal under paragraph (b), or both paragraphs (b) and (c) of that subsection, not later than 28 days after the conclusion of the examination of facts;

(iii) in the case of an appeal under paragraph (c) of that subsection against an order made on an acquittal, by virtue of section 54(6) or 55(3) of this Act, on the ground of insanity at the time of the act or omission, not later than 14 days after the date of the acquittal;

(iv) in the case of an appeal under that paragraph against an order made on a finding under section 55(2), not later than 14 days after the conclusion of the examination of facts,

or within such longer period as the High Court may, on cause shown, allow.

(3) Where the examination of facts was held in connection with proceedings on indictment, subsections (1)(a) and (2)(b)(i) above are without prejudice to section 74(1) of this Act.

(4) Where an appeal is taken under subsection (1) above, the period from the date on which the appeal was lodged until it is withdrawn or disposed of shall not count towards any time limit applying in respect of the case.

(5) An appellant in an appeal under this section shall be entitled to be present at the hearing of the appeal unless the High Court determines that his presence is not practicable or appropriate.

(6) In disposing of an appeal under subsection (1) above the High Court may—

(a) affirm the decision of the court of first instance;

(b) make any other finding or order which that court could have made at the time when it made the finding or order which is the subject of the appeal; or

(c) remit the case to that court with such directions in the matter as the High Court thinks fit.

(7) Section 60 of this Act shall not apply in relation to any order as respects which a person has a right of appeal under subsection (1)(c) above.

63 Appeal by prosecutor in case involving insanity.

(1) The prosecutor may appeal to the High Court on a point of law against—

(a) a finding under subsection (1) of section 54 of this Act that an accused is insane so that his trial cannot proceed or continue;

(b) an acquittal on the ground of insanity at the time of the act or omission by virtue of subsection (6) of that section;

(c) an acquittal under section 55(3) of this Act (whether or not on the ground of insanity at the time of the act or omission); or

(d) any order made under section 57(2) of this Act.

(2) An appeal under subsection (1) above shall be—

(a) in writing; and

(b) lodged—

(i) in the case of an appeal under paragraph (a) or (b) of that subsection, not later than seven days after the finding or, as the case may be, the acquittal which is the subject of the appeal;

(ii) in the case of an appeal under paragraph (c) or (d) of that subsection, not later than seven days after the conclusion of the examination of facts,

or within such longer period as the High Court may, on cause shown, allow.

(3) Where the examination of facts was held in connection with proceedings on indictment, subsections (1)(a) and (2)(b)(i) above are without prejudice to section 74(1) of this Act.

(4) A respondent in an appeal under this subsection shall be entitled to be present at the hearing of the appeal unless the High Court determines that his presence is not practicable or appropriate.

(5) In disposing of an appeal under subsection (1) above the High Court may—

(a) affirm the decision of the court of first instance;

(b) make any other finding or order which that court could have made at the time when it made the finding or order which is the subject of the appeal; or

(c) remit the case to that court with such directions in the matter as the High Court thinks fit.

(6) In this section, "the prosecutor" means, in relation to proceedings on indictment, the Lord Advocate.

PART VII

SOLEMN PROCEEDINGS

The indictment

64 Prosecution on indictment.

(1) All prosecutions for the public interest before the High Court or before the sheriff sitting with a jury shall proceed on indictment in name of Her Majesty's Advocate.

(2) The indictment may be in the forms—

(a) set out in Schedule 2 to this Act; or

(b) prescribed by Act of Adjournal,

or as nearly as may be in such form.

(3) Indictments in proceedings before the High Court shall be signed by the Lord Advocate or one of his deputes.

(4) Indictments in proceedings before the sheriff sitting with a jury shall be signed by the procurator fiscal, and the words "By Authority of Her Majesty's Advocate" shall be prefixed to the signature of the procurator fiscal.

(5) The principal record and service copies of indictments and all notices of citation, lists of witnesses, productions and jurors, and all other official documents required in a prosecution on indictment may be either written or printed or partly written and partly printed.

(6) Schedule 3 to this Act shall have effect as regards indictments under this Act.

65 Prevention of delay in trials.

(1) Subject to subsections (2) and (3) below, an accused shall not be tried on indictment for any offence unless the trial is commenced within a period of 12 months of the first appearance of the accused on petition in respect of the offence; and, failing such commencement within that period, the accused

[[F64](a) shall be discharged forthwith from any indictment as respects the offence; and

(b) shall not at any time be proceeded against on indictment as respects the offence**]**

(2) Nothing in subsection (1) above shall bar the trial of an accused for whose arrest a warrant has been granted for failure to appear at a diet in the case.

(3) On an application made for the purpose, the sheriff or, where an indictment has been served on the accused in respect of the High Court, a single judge of that court, may on cause shown extend the said period of 12 months.

[[F65](3A) An application under subsection (3) shall not be made at any time when an appeal made with leave under section 74(1) of this Act has not been disposed of by the High Court.**]**

(4) Subject to subsections (5) to (9) below, an accused who is committed for any offence until liberated in due course of law shall not be detained by virtue of that committal for a total period of more than—

(a) 80 days, unless within that period the indictment is served on him, which failing he shall be liberated forthwith; or

(b) 110 days, unless the trial of the case is commenced within that period, which failing he shall be liberated forthwith and thereafter he shall be for ever free from all question or process for that offence.

(5) Subject to subsection (6) below, a single judge of the High Court, may, on an application made to him for the purpose, for any sufficient cause extend the period mentioned in subsection (4)(a) above.

(6) An application under subsection (5) above shall not be granted if the judge is satisfied that, but for some fault on the part of the prosecution, the indictment could have been served within the period of 80 days.

(7) A single judge of the High Court may, on an application made to him for the purpose, extend the period mentioned in subsection (4)(b) above where he is satisfied that delay in the commencement of the trial is due to—

(a) the illness of the accused or of a judge;

(b) the absence or illness of any necessary witness;

(c) any other sufficient cause which is not attributable to any fault on the part of the prosecutor.

(8) The grant or refusal of any application to extend the periods mentioned in this section may be appealed against by note of appeal presented to the High Court; and that Court may affirm, reverse or amend the determination made on such application.

(9) For the purposes of this section, a trial shall be taken to commence when the oath is administered to the jury.

(10) In calculating the period of 12 months specified in subsections (1) and (3) above there shall be left out of account any period during which the accused is detained, other than while serving a sentence of imprisonment or detention, in any other part of the United Kingdom or in any of the Channel Islands or the Isle of Man in any prison or other institution or place mentioned in subsection (1) or (1A) of section 29 of the [M38]Criminal Justice Act 1961 (transfer of prisoners for certain judicial purposes).

Textual Amendments

F64 S. 65(1)(a)(b) substituted (4.7.1996) for words by 1996 c. 25, **s. 73(3)** (with s. 78(1))

F65 S. 65(3A) inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(9)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

Modifications etc. (not altering text)

C15 S. 65 extended (1.10.1997) by 1997 c. 43, s. 41, **Sch. 1 Pt. II para. 10(1)(a)**; S.I. 1997/2200, **art. 2(1)(g)**

C16 S. 65 modified (1.10.1997) by 1997 c. 43, s. 41, **Sch. 1 Pt. II para. 11(1)(a)**; S.I. 1997/2200, **art. 2(1)(g)** (subject to transitional provisions in art. 5)

C17 S. 65 applied (with modifications) (1.10.1997) by S.I. 1997/1776, arts. 1, 2, **Sch. 1 paras. 5-7**; S.I. 1997/2200, **art. 2(1)(g)** (subject to transitional provisions in art. 5)

Marginal Citations

M38 1961 c.39.

66 Service and lodging of indictment, etc.

(1) When a sitting of the sheriff court or of the High Court has been appointed to be held for the trial of persons accused on indictment—

(a) where the trial diet is to be held in the sheriff court, the sheriff clerk; and

(b) where the trial diet is to be held in the High Court, the Clerk of Justiciary,

shall issue a warrant to officers of law to cite the accused, witnesses and jurors, in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form,

and such warrant authenticated by the signature of such clerk, or a duly certified copy thereof, shall be a sufficient warrant for such citation.

(2) The execution of the citation against an accused, witness or juror shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form.

(3) A witness may be cited by sending the citation to the witness by ordinary or registered post or by the recorded delivery service and a written execution in the form prescribed by Act of Adjournal or as nearly as may be in such form, purporting to be signed by the person who served such citation together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such citation.

(4) The accused shall be served with a copy of the indictment and of the list of the names and addresses of the witnesses to be adduced by the prosecution.

(5) Except in a case to which section 76 of this Act applies, the prosecutor shall on or before the date of service of the indictment lodge the record copy of the indictment with the clerk of court before which the trial is to take place, together with a copy of the list of witnesses and a copy of the list of productions.

(6) Except where the indictment is served under section 76(1) of this Act, a notice shall be served on the accused with the indictment calling upon him to appear and answer to the indictment—

(a) where the case is to be tried in the sheriff court, at a first diet not less than 15 clear days after the service of the indictment and not less than 10 clear days before the trial diet; and

(b) at a trial diet (either in the High Court or in the sheriff court) not less than 29 clear days after the service of the indictment and notice.

(7) Service of the indictment, lists of witnesses and productions, and any notice or intimation to the accused, and the citation of witnesses, whether for precognition or trial, may be effected by any officer of law.

(8) No objection to the service of an indictment or to the citation of a witness shall be upheld on the ground that the officer who effected service or executed the citation was not at the time in possession of the warrant of citation, and it shall not be necessary to produce the execution of citation of an indictment.

(9) The citation of witnesses may be effected by any officer of law duly authorised; and in any proceedings, the evidence on oath of the officer shall, subject to subsection (10) below, be sufficient evidence of the execution of the citation.

(10) A court shall not issue a warrant to apprehend a witness who fails to appear at a diet to which he has been duly cited unless the court is satisfied that the witness received the citation or that its contents came to his knowledge.

(11) No objection to the competency of the officer who served the indictment to give evidence in respect of such service shall be upheld on the ground that his name is not included in the list of witnesses served on the accused.

(12) Any deletion or correction made before service on the record or service copy of an indictment shall be sufficiently authenticated by the initials of the person who has signed, or could by law have signed, the indictment.

(13) Any deletion or correction made on a service copy of an indictment, or on any notice of citation, postponement, adjournment or other notice required to be served on an

accused shall be sufficiently authenticated by the initials of any procurator fiscal or of the person serving the same.

(14) Any deletion or correction made on any execution of citation or notice of other document requiring to be served shall be sufficiently authenticated by the initials of the person serving the same.

67 Witnesses.

(1) The list of witnesses shall consist of the names of the witnesses together with an address at which they can be contacted for the purposes of precognition.

(2) It shall not be necessary to include in the list of witnesses the names of any witnesses to the declaration of the accused or the names of any witnesses to prove that an extract conviction applies to the accused, but witnesses may be examined in regard to these matters without previous notice.

(3) Any objection in respect of misnomer or misdescription of—

(a) any person named in the indictment; or

(b) any witness in the list of witnesses,

shall be intimated in writing to the court before which the trial is to take place, to the prosecutor and to any other accused, where the case is to be tried in the sheriff court, at or before the first diet and, where the case is to be tried in the High Court, not less than ten clear days before the trial diet; and, except on cause shown, no such objection shall be admitted at the trial diet unless so intimated.

(4) Where such intimation has been given or cause is shown and the court is satisfied that the accused making the objection has not been supplied with sufficient information to enable him to identify the person named in the indictment or to find such witness in sufficient time to precognosce him before the trial, the court may grant such remedy by postponement, adjournment or otherwise as appears to it to be appropriate.

(5) Without prejudice to—

(a) any enactment or rule of law permitting the prosecutor to examine any witness not included in the list of witnesses; or

(b) subsection (6) below,

in any trial it shall be competent with the leave of the court for the prosecutor to examine any witness or to put in evidence any production not included in the lists lodged by him, provided that written notice, containing in the case of a witness his name and address as mentioned in subsection (1) above, has been given to the accused not less than two clear days before the day on which the jury is sworn to try the case.

(6) It shall be competent for the prosecutor to examine any witness or put in evidence any production included in any list or notice lodged by the accused, and it shall be competent for an accused to examine any witness or put in evidence any production included in any list or notice lodged by the prosecutor or by a co-accused.

[F66 67A Failure of witness to attend for, or give evidence on, precognition.

(1) This section applies where a prosecutor has obtained a warrant to cite a witness for precognition and has served a citation for precognition on the witness.

(2) Where this section applies, a witness who—

(a) fails without reasonable excuse, after receiving at least 48 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 guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to a term of imprisonment not exceeding 21 days.**]**

Textual Amendments

F66 S. 67A inserted (1.8.1997) by 1997 c. 48, **s. 57(1)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

68 Productions.

(1) The list of productions shall include the record, made under section 37 of this Act (incorporating any rectification authorised under section 38(1) of this Act), of proceedings at the examination of the accused.

(2) The accused shall be entitled to see the productions according to the existing law and practice in the office of the sheriff clerk of the district in which the court of the trial diet is situated or, where the trial diet is to be in the High Court in Edinburgh, in the Justiciary Office.

(3) Where a person who has examined a production is adduced to give evidence with regard to it and the production has been lodged at least eight days before the trial diet, it shall not be necessary to prove—

(a) that the production was received by him in the condition in which it was taken possession of by the procurator fiscal or the police and returned by him after his examination of it to the procurator fiscal or the police; or

(b) that the production examined by him is that taken possession of by the procurator fiscal or the police,

unless the accused, at least four days before the trial diet, gives in accordance with subsection (4) below written notice that he does not admit that the production was received or returned as aforesaid or, as the case may be, that it is that taken possession of as aforesaid.

(4) The notice mentioned in subsection (3) above shall be given—

(a) where the accused is cited to the High Court for the trial diet, to the Crown Agent; and

(b) where he is cited to the sheriff court for the trial diet, to the procurator fiscal.

69 Notice of previous convictions.

(1) No mention shall be made in the indictment of previous convictions, nor shall extracts of previous convictions be included in the list of productions annexed to the indictment.

(2) If the prosecutor intends to place before the court any previous conviction, he shall cause to be served on the accused along with the indictment a notice in the form set

out in an Act of Adjournal or as nearly as may be in such form, and any conviction specified in the notice shall be held to apply to the accused unless he gives, in accordance with subsection (3) below, written intimation objecting to such conviction on the ground that it does not apply to him or is otherwise inadmissible.

(3) Intimation objecting to a conviction under subsection (2) above shall be given—

(a) where the accused is cited to the High Court for the trial diet, to the Crown Agent; or

(b) where the accused is cited to the sheriff court for the trial diet, to the procurator fiscal,

at least five clear days before the first day of the sitting in which the trial diet is to be held.

(4) Where notice is given by the accused under section 76 of this Act of his intention to plead guilty and the prosecutor intends to place before the court any previous conviction, he shall cause to be served on the accused along with the indictment a notice in the form set out in an Act of Adjournal or as nearly as may be in such form.

(5) Where the accused pleads guilty at any diet, no objection to any conviction of which notice has been served on him under this section shall be entertained unless he has, at least two clear days before the diet, given intimation to the procurator fiscal of the district to the court of which the accused is cited for the diet.

70 Proceedings against bodies corporate.

(1) This section applies to proceedings on indictment against a body corporate.

(2) The indictment may be served by delivery of a copy of the indictment together with notice to appear at the registered office or, if there is no registered office or the registered office is not in the United Kingdom, at the principal place of business in the United Kingdom of the body corporate.

(3) Where a letter containing a copy of the indictment has been sent by registered post or by the recorded delivery service to the registered office or principal place of business of the body corporate, an acknowledgement or certificate of the delivery of the letter issued by the Post Office shall be sufficient evidence of the delivery of the letter at the registered office or place of business on the day specified in such acknowledgement or certificate.

(4) A body corporate may, for the purpose of—

(a) stating objections to the competency or relevancy of the indictment or proceedings; or

(b) tendering a plea of guilty or not guilty; or

(c) making a statement in mitigation of sentence,

appear by a representative of the body corporate.

(5) Where at the trial diet the body corporate does not appear as mentioned in subsection (4) above, or by counsel or a solicitor, the court shall, on the motion of the prosecutor, if it is satisfied that subsection (2) above has been complied with, proceed to hear and dispose of the case in the absence of the body corporate.

(6) Where a body corporate is sentenced to a fine, the fine may be recovered in like manner in all respects as if a copy of the sentence certified by the clerk of the court were an

extract decree of the Court of Session for the payment of the amount of the fine by the body corporate to the Queen's and Lord Treasurer's Remembrancer.

(7) Nothing in section 77 of this Act shall require a plea tendered by or on behalf of a body corporate to be signed.

(8) In this section, "representative", in relation to a body corporate, means an officer or employee of the body corporate duly appointed by it for the purpose of the proceedings; and a statement in writing purporting to be signed by the managing director of, or by any person having or being one of the persons having the management of the affairs of the body corporate, to the effect that the person named in the statement has been appointed the representative of the body corporate for the purpose of any proceedings to which this section applies shall be sufficient evidence of such appointment.

Modifications etc. (not altering text)

C18 S. 70 extended (6.1.1997) by S.I. 1996/2827, **reg. 70(4)**
S. 70 applied (with modifications) (16.2.2001) by 2000 c. 41, **s. 153(4)** (with s. 156(6)); S.I. 2001/222, art. 2, **Sch. 1 Pt. I** (subject to transitional provisions in Sch. 1 Pt. II)

VALID FROM 06/06/2011

[F67 70A Defence statements

(1) This section applies where an indictment is served on an accused.

(2) The accused must lodge a defence statement at least 14 days before the first diet.

(3) The accused must lodge a defence statement at least 14 days before the preliminary hearing.

(4) At least 7 days before the trial diet the accused must—

(a) where there has been no material change in circumstances in relation to the accused's defence since the last defence statement was lodged, lodge a statement stating that fact,

(b) where there has been a material change in circumstances in relation to the accused's defence since the last defence statement was lodged, lodge a defence statement.

(5) If after lodging a statement under subsection (2), (3) or (4) there is a material change in circumstances in relation to the accused's defence, the accused must lodge a defence statement.

(6) Where subsection (5) requires a defence statement to be lodged, it must be lodged before the trial diet begins unless on cause shown the court allows it to be lodged during the trial diet.

(7) The accused may lodge a defence statement—

(a) at any time before the trial diet, or

(b) during the trial diet if the court on cause shown allows it.

(8) As soon as practicable after lodging a defence statement or a statement under subsection (4)(a), the accused must send a copy of the statement to the prosecutor and any co-accused.

(9) In this section, "defence statement" means a statement setting out—

(a) the nature of the accused's defence, including any particular defences on which the accused intends to rely,

(b) any matters of fact on which the accused takes issue with the prosecution and the reason for doing so,

(c) particulars of the matters of fact on which the accused intends to rely for the purposes of the accused's defence,

(d) any point of law which the accused wishes to take and any authority on which the accused intends to rely for that purpose,

(e) by reference to the accused's defence, the nature of any information that the accused requires the prosecutor to disclose, and

(f) the reasons why the accused considers that disclosure by the prosecutor of any such information is necessary.**]**

Textual Amendments

F67 S. 70A inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 124(3)**, 206(1) (with s. 124(1))

Pre-trial proceedings

71 First diet.

(1) At a first diet the court shall, so far as is reasonably practicable, ascertain whether the case is likely to proceed to trial on the date assigned as the trial diet and, in particular—

(a) the state of preparation of the prosecutor and of the accused with respect to their cases; and

(b) the extent to which the prosecutor and the accused have complied with the duty under section 257(1) of this Act.

(2) In addition to the matters mentioned in subsection (1) above the court shall, at a first diet, consider any matter mentioned in any of paragraphs (a) to (d) of section 72(1) of this Act of which a party has, not less than two clear days before the first diet, given notice to the court and to the other parties.

(3) At a first diet the court may ask the prosecutor and the accused any question in connection with any matter which it is required to ascertain or consider under subsection (1) or (2) above.

(4) The accused shall attend a first diet of which he has been given notice and the court may, if he fails to do so, grant a warrant to apprehend him.

(5) A first diet may proceed notwithstanding the absence of the accused.

(6) The accused shall, at the first diet, be required to state how he pleads to the indictment, and section 77 of this Act shall apply where he tenders a plea of guilty.

(7) Where at a first diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—

(a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and

(b) may fix a further first diet.

(8) Subject to subsection (7) above, the court may, if it considers it appropriate to do so, adjourn a first diet.

(9) In this section "the court" means the sheriff court.

VALID FROM 01/11/2002

[F68 71A Further pre-trial diet: dismissal or withdrawal of solicitor representing accused in case of sexual offence

(1) It is the duty of a solicitor who—

(a) was engaged for the purposes of the defence of an accused charged with a sexual offence to which section 288C of this Act applies—

(i) at the time of a first diet,

(ii) at the time of a diet under this section, or

(iii) in the case of a diet which, under subsection (7) below, is dispensed with, at the time when it was so dispensed with; and

(b) after that time but before the trial diet—

(i) is dismissed by the accused; or

(ii) withdraws,

forthwith to inform the court in writing of those facts.

(2) On being so informed, the court shall order that, before the trial diet, there shall be a further pre-trial diet under this section and ordain the accused then to attend.

(3) At a diet under this section, the court shall ascertain whether or not the accused has engaged another solicitor for the purposes of his defence at the trial.

(4) Where, following inquiries for the purposes of subsection (3) above, it appears to the court that the accused has not engaged another solicitor for the purposes of his defence at his trial, it may adjourn the diet under this section for a period of not more than 48 hours and ordain the accused then to attend.

(5) A diet under this section shall be not less than 10 clear days before the trial diet.

(6) A court may, at a diet under this section, postpone the trial diet.

(7) The court may dispense with a diet under this section previously ordered, but only if a solicitor engaged by the accused for the purposes of the defence of the accused at the trial has, in writing—

(a) confirmed his engagement for that purpose; and

(b) requested that the diet be dispensed with.

(8) Where—

(a) a solicitor has requested, under subsection (7) above, that a diet under this section be dispensed with; and

(b) before that diet has been held or dispensed with, the solicitor—

(i) is dismissed by the accused; or

(ii) withdraws,

the solicitor shall forthwith inform the court in writing of those facts.**]**

Textual Amendments

F68 S. 71A inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), s. 3, **Sch. para. 6**; S.S.I. 2002/443, **art. 3**

72 Preliminary diet: notice

(1) Subject to subsections (4) and (5) below, where a party to a case which is to be tried in the High Court within the appropriate period gives written notice to the court and to the other parties—

(a) that he intends to raise—

(i) a matter relating to the competency or relevancy of the indictment; or

(ii) an objection to the validity of the citation against him, on the ground of any discrepancy between the record copy of the indictment and the copy served on him, or on account of any error or deficiency in such service copy or in the notice of citation;

(b) that he intends—

(i) to submit a plea in bar of trial;

(ii) to apply for separation or conjunction of charges or trials;

(iii) to raise a preliminary objection under section 255 of this Act; or

(iv) to make an application under section 278(2) of this Act;

(c) that there are documents the truth of the contents of which ought to be admitted, or that there is any other matter which in his view ought to be agreed;

(d) that there is some point, as regards any matter not mentioned in paragraph (a) to (c) above, which could in his opinion be resolved with advantage before the trial and that he therefore applies for a diet to be held before the trial diet,

the court shall in a case to which paragraph (a) above applies, and in any other case may, order that there be a diet before the trial diet, and a diet ordered under this subsection is in this Act referred to as a "preliminary diet".

(2) A party giving notice under subsection (1) above shall specify in the notice the matter or, as the case may be, the grounds of submission or the point to which the notice relates.

(3) The fact that a preliminary diet has been ordered on a particular notice under subsection (1) above shall not preclude the court's consideration at that diet of any other such notice as is mentioned in that subsection, which has been intimated to the court and to the other parties at least 24 hours before that diet.

(4) Subject to subsection (5) below, the court may on ordering a preliminary diet postpone the trial diet for a period not exceeding 21 days; and any such postponement (including postponement for a period which by virtue of the said subsection (5) exceeds 21 days) shall not count towards any time limit applying in respect of the case.

(5) Any period mentioned in subsection (4) above may be extended by the High Court in respect of the case.

(6) In subsection (1) above, "appropriate period" means as regards notice—

(a) under paragraph (a) of that subsection, the period of 15 clear days after service of the indictment;

(b) under paragraph (b) of that subsection, the period from service of the indictment to 10 clear days before the trial diet; and

(c) under paragraph (c) or (d) of that subsection, the period from service of the indictment to the trial diet.

VALID FROM 01/11/2002

[F69 72A Pre-trial diet: inquiry about legal representation of accused in cases of sexual offences

(1) Where a case to be tried in the High Court is in respect of a sexual offence to which section 288C of this Act applies, the court shall order that, before the trial diet, there shall be a diet under this section and ordain the accused then to attend.

(2) At a diet under this section, the court shall ascertain whether or not the accused has engaged a solicitor for the purposes of his defence at the trial.

(3) Where, following inquiries for the purposes of subsection (2) above, it appears to the court that the accused has not engaged a solicitor for the purposes of his defence at his trial, it may adjourn the diet under this section for a period of not more than 48 hours and ordain the accused then to attend.

(4) A diet under this section shall be not less than 15 clear days after the service of the indictment and not less than 10 clear days before the trial diet.

(5) A diet under this section may be conjoined with a preliminary diet.

(6) A court may, at a diet under this section, postpone the trial diet.

(7) The court may dispense with a diet under this section previously ordered, but only if a solicitor engaged by the accused for the purposes of the defence of the accused at the trial has, in writing—

(a) confirmed his engagement for that purpose; and

(b) requested that the diet be dispensed with.

(8) Where—

(a) a solicitor has requested, under subsection (7) above, that a diet under this section be dispensed with; and

(b) before that diet has been held or dispensed with, the solicitor—

(i) is dismissed by the accused; or

(ii) withdraws,

the solicitor shall forthwith inform the court in writing of those facts.

(9) It is the duty of a solicitor who—

(a) was engaged for the purposes of the defence of the accused at the trial—

(i) at the time of a diet under this section; or

(ii) in the case of a diet which, under subsection (7) above, is dispensed with, at the time when it was so dispensed with; and

(b) after that time but before the trial diet—

(i) is dismissed by the accused; or

(ii) withdraws,

forthwith to inform the court in writing of those facts.

(10) On being so informed, the court shall order a further diet under this section.**]**

Textual Amendments

F69 S. 72A inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), s. 3, **Sch. para. 7**; S.S.I. 2002/443, **art. 3**

VALID FROM 01/02/2005

[F70 72B Power to dispense with preliminary hearing

(1) The court may, on an application made to it jointly by the parties, dispense with a preliminary hearing and appoint a trial diet if the court is satisfied on the basis of the application that—

(a) the state of preparation of the prosecutor and the accused with respect to their cases is such that the case is likely to be ready to proceed to trial on the date to be appointed for the trial diet;

(b) there are no preliminary pleas, preliminary issues or other matters which require to be, or could with advantage be, disposed of before the trial; and

(c) there are no persons to whom section 72(7) of this Act applies.

(2) An application under subsection (1) above shall identify which (if any) of the witnesses included in the list of witnesses are required by the prosecutor or the accused to attend the trial.

(3) Where a trial diet is to be appointed under subsection (1) above, it shall be appointed in accordance with such procedure as may be prescribed by Act of Adjournal.

(4) Where a trial diet is appointed under subsection (1) above, the accused shall appear at the diet and answer the indictment.

(5) The fact that a preliminary hearing in any case has been dispensed with under subsection (1) above shall not affect the calculation in that case of any time limit for the giving of any notice or the doing of any other thing under this Act, being a time limit fixed by reference to the preliminary hearing.

(6) Accordingly, any such time limit shall have effect in any such case as if it were fixed by reference to the date on which the preliminary hearing would have been held if it had not been dispensed with.

Textual Amendments

F70 Ss. 72-72D substituted for ss. 72-73A (1.2.2005, 1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 1(3)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, **art. 2** (with art. 3)

VALID FROM 01/02/2005

72C Procedure where preliminary hearing does not proceed

(1) The prosecutor shall not raise a fresh libel in any case in which the court has deserted a preliminary hearing *simpliciter* unless the court's decision has been reversed on appeal.

(2) Where a preliminary hearing is deserted *pro loco et tempore*, the court may appoint a further preliminary hearing for a later date and the accused shall appear and answer the indictment at that hearing.

(3) Subsection (4) below applies where, at a preliminary hearing—

(a) the hearing has been deserted *pro loco et tempore* for any reason and no further preliminary hearing has been appointed under subsection (2) above; or

(b) the indictment is for any reason not proceeded with and the hearing has not been adjourned or postponed.

(4) Where this subsection applies, the prosecutor may, at any time within the period of two months after the relevant date, give notice to the accused on another copy of the indictment to appear and answer the indictment—

(a) at a further preliminary hearing in the High Court not less than seven clear days after the date of service of the notice; or

(b) at—

(i) a first diet not less than 15 clear days after the service of the notice and not less than 10 clear days before the trial diet; and

(ii) a trial diet not less than 29 clear days after the service of the notice,

in the sheriff court where the charge is one that can lawfully be tried in that court.

(5) Where notice is given to the accused under subsection (4)(b) above, then for the purposes of section 65(4) of this Act—

(a) the giving of the notice shall be taken to be service of an indictment in respect of the sheriff court; and

(b) the previous service of the indictment in respect of the High Court shall be disregarded.

(6) In subsection (4) above, "the relevant date" means—

(a) where paragraph (a) of subsection (3) above applies, the date on which the diet was deserted as mentioned in that paragraph; or

(b) where paragraph (b) of that subsection applies, the date of the preliminary hearing referred to in that paragraph.

(7) A notice referred to in subsection (4) above shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form.

Textual Amendments

F70 Ss. 72-72D substituted for ss. 72-73A (1.2.2005, 1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 1(3)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, **art. 2** (with art. 3)

72D Preliminary hearing: further provision

(1) The court may, on cause shown, allow a preliminary hearing to proceed notwithstanding the absence of the accused.

(2) Where—

(a) the accused is a body corporate;

(b) it fails to appear at a preliminary hearing;

(c) the court allows the hearing to proceed in its absence under subsection (1) above; and

(d) no plea is entered on its behalf at the hearing,

it shall be treated for the purposes of proceedings at the preliminary hearing as having pled not guilty.

(3) Where, at a preliminary hearing, a trial diet is appointed, the accused shall appear at the trial diet and answer the indictment.

(4) At a preliminary hearing, the court—

(a) shall take into account any written record lodged under section 72E of this Act; and

(b) may ask the prosecutor and the accused any question in connection with any matter which it is required to dispose of or ascertain under section 72 of this Act.

(5) The proceedings at a preliminary hearing shall be recorded by means of shorthand notes or by mechanical means.

(6) Subsections (2) to (4) of section 93 of this Act shall apply for the purposes of the recording of proceedings at a preliminary hearing in accordance with subsection (5) above as they apply for the purposes of the recording of proceedings at the trial in accordance with subsection (1) of that section.

(7) The Clerk of Justiciary shall prepare, in such form and manner as may be prescribed by Act of Adjournal, a minute of proceedings at a preliminary hearing, which shall record, in particular, whether any preliminary pleas or issues were disposed of and, if so, how they were disposed of.

(8) In this section, references to a preliminary hearing include an adjourned preliminary hearing.

(9) In this section and sections 72 to 72C, "the court" means the High Court.

VALID FROM 01/02/2005

[F71 72E Written record of state of preparation in certain cases

(1) This section applies where, in any proceedings in the High Court, a solicitor has notified the Court under section 72F(1) of this Act that he has been engaged by the accused for the purposes of the conduct of his case at the preliminary hearing.

(2) The prosecutor and the accused's legal representative shall, not less than two days before the preliminary hearing—

(a) communicate with each other with a view to jointly preparing a written record of their state of preparation with respect to their cases (referred to in this section as "the written record"); and

(b) lodge the written record with the Clerk of Justiciary.

(3) The High Court may, on cause shown, allow the written record to be lodged after the time referred to in subsection (2) above.

(4) The written record shall—

(a) be in such form, or as nearly as may be in such form;

(b) contain such information; and

(c) be lodged in such manner,

as may be prescribed by Act of Adjournal.

(5) The written record may contain, in addition to the information required by virtue of subsection (4)(b) above, such other information as the prosecutor and the accused's legal representative consider appropriate.

(6) In this section—

"the accused's legal representative" means—

(a) the solicitor referred to in subsection (1) above; or

(b) where the solicitor has instructed counsel for the purposes of the conduct of the accused's case at the preliminary hearing, either the solicitor or that counsel, or both of them; and

"counsel" includes a solicitor who has a right of audience in the High Court of Justiciary under section 25A (rights of audience in various courts including the High Court of Justiciary) of the Solicitors (Scotland) Act 1980 (c. 46).**]**

Textual Amendments

F71 S. 72E inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 2**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

VALID FROM 04/12/2004

[F72 72F Engagement, dismissal and withdrawal of solicitor representing accused

(1) In any proceedings on indictment, it is the duty of a solicitor who is engaged by the accused for the purposes of his defence at any part of the proceedings to notify the court and the prosecutor of that fact forthwith in writing.

(2) A solicitor is to be taken to have complied with the duty under subsection (1) to notify the prosecutor of his engagement if, before service of the indictment, he—

(a) notified in writing the procurator fiscal for the district in which the charge against the accused was then being investigated that he was then engaged by the accused for the purposes of his defence; and

(b) had not notified that procurator fiscal in writing that he had been dismissed by the accused or had withdrawn from acting.

(3) Where any such solicitor as is referred to in subsection (1) above—

(a) is dismissed by the accused; or

(b) withdraws,

it is the duty of the solicitor to inform the court and the prosecutor of those facts forthwith in writing.

(4) The prosecutor shall, for the purposes of subsections (1) and (3), be taken to be notified or informed of any fact in accordance with those subsections if—

(a) in proceedings in the High Court, the Crown Agent; or

(b) in proceedings on indictment in the sheriff court, the procurator fiscal for the district in which the trial diet is to be held,

is so notified or, as the case may be, informed of the fact.

(5) On being informed in accordance with subsection (3) above of the dismissal or withdrawal of the accused's solicitor in any case to which subsections (6) and (7) below apply, the court shall order that, before the trial diet, there shall be a further pre-trial diet under this section.

(6) This subsection applies to any case—

(a) where the accused is charged with an offence to which section 288C of this Act applies;

(b) in respect of which section 288E of this Act applies; or

(c) in which an order has been made under section 288F(2) of this Act.

(7) This subsection applies to any case in which—

(a) the solicitor was engaged for the purposes of the defence of the accused—

(i) in the case of proceedings in the High Court, at the time of a preliminary hearing or, if a preliminary hearing was dispensed with under section 72B(1) of this Act, at the time it was so dispensed with;

(ii) in the case of solemn proceedings in the sheriff court, at the time of a first diet;

(iii) at the time of a diet under this section; or

(iv) in the case of a diet which, under subsection (11) below, is dispensed with, at the time when it was so dispensed with; and

(b) the court is informed as mentioned in subsection (3) above after that time but before the trial diet.

(8) At a diet under this section, the court shall ascertain whether or not the accused has engaged another solicitor for the purposes of his defence at the trial.

(9) A diet under this section shall be not less than 10 clear days before the trial diet.

(10) A court may, at a diet under this section, postpone the trial diet for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.

(11) The court may dispense with a diet under this section previously ordered, but only if a solicitor engaged by the accused for the purposes of the defence of the accused at the trial has, in writing—

(a) confirmed his engagement for that purpose; and

(b) requested that the diet be dispensed with.**]**

Textual Amendments

F72 S. 72F inserted (4.12.2004) "after s. 72E" by virtue of Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 8**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

VALID FROM 04/12/2004

[F73 72G Service etc. on accused through a solicitor

(1) In any proceedings on indictment, anything which is to be served on or given, notified or otherwise intimated to, the accused shall be taken to be so served, given, notified or intimated if it is, in such form and manner as may be prescribed by Act of Adjournal, served on or given, notified or intimated to (as the case may be) the solicitor described in subsection (2) below at that solicitor's place of business.

(2) That solicitor is any solicitor—

(a) who—

(i) has notified the prosecutor under subsection (1) of section 72F of this Act that he is engaged by the accused for the purposes of his defence; and

(ii) has not informed the prosecutor under subsection (3) of that section that he has been dismissed by, or has withdrawn from acting for, the accused; or

(b) who—

(i) has been appointed to act for the purposes of the accused's defence at the trial under section 92 or 288D of this Act; and

(ii) has not been relieved of the appointment by the court.**]**

Textual Amendments

F73 S. 72G inserted (4.12.2004) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 12**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

73 Preliminary diet: procedure.

(1) Where a preliminary diet is ordered, subject to subsection (2) below, the accused shall attend it, and he shall be required at the conclusion of the diet to state how he pleads to the indictment.

(2) The court may permit the diet to proceed notwithstanding the absence of an accused.

(3) At a preliminary diet the court shall, in addition to disposing of any matter specified in a notice given under subsection (1) of section 72 of this Act or referred to in subsection (3) of that section, ascertain, so far as is reasonably practicable, whether the case is likely to proceed to trial on the date assigned as the trial diet and, in particular—

(a) the state of preparation of the prosecutor and of the accused with respect to their cases; and

(b) the extent to which the prosecutor and the accused have complied with the duty under section 257(1) of this Act.

(4) At a preliminary diet the court may ask the prosecutor and the accused any question in connection with any matter specified in a notice under subsection (1) of the said section 72 or referred to in subsection (3) of that section or which it is required to ascertain under subsection (3) above.

(5) Where at a preliminary diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—

(a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and

(b) may fix a further preliminary diet.

(6) Subject to subsection (5) above, the court may, if it considers it appropriate to do so, adjourn a preliminary diet.

(7) Where an objection is taken to the relevancy of the indictment under subsection (1)(a)(i) of the said section 72, the clerk of court shall minute whether the objection is sustained or repelled and sign the minute.

(8) In subsection (1) above, the reference to the accused shall, without prejudice to section 6(c) of the [M39]Interpretation Act 1978, in any case where there is more than one accused include a reference to all of them.

Marginal Citations

M39 1978 c.30.

74 Appeals in connection with preliminary diets.

(1) Without prejudice to—

(a) any right of appeal under section 106 or 108 of this Act; and

(b) section 131 of this Act,

and subject to subsection (2) below, a party may with the leave of the court of first instance (granted either on the motion of the party or *ex proprio motu*) in accordance with such procedure as may be prescribed by Act of Adjournal, appeal to the High Court against a decision at a first diet or a preliminary diet.

(2) An appeal under subsection (1) above—

(a) may not be taken against a decision to adjourn the first or, as the case may be, preliminary diet or to postpone the trial diet;

(b) must be taken not later than 2 days after the decision.

(3) Where an appeal is taken under subsection (1) above, the High Court may postpone the trial diet for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.

(4) In disposing of an appeal under subsection (1) above the High Court—

(a) may affirm the decision of the court of first instance or may remit the case to it with such directions in the matter as it thinks fit; [F74]. . .

(b) where the court of first instance has dismissed the indictment or any part of it, may reverse that decision and direct that the court of first instance fix a trial diet, if it has not already fixed one as regards so much of the indictment as it has not dismissed.

[[F75](c) may on cause shown extend the period mentioned in section 65(1) of this Act.**]**

Textual Amendments

F74 Word in s. 74(4) repealed (1.8.1997) by 1997 c. 48, s. 62(1)(2), Sch. 1 para. 21(10)(a), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F75 S. 74(4)(c) inserted (1.8.1997) by 1997 c. 48, s. 62(1)(2), **Sch. 1 para. 21(10)(b)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

75 Computation of certain periods.

Where the last day of any period mentioned in section 66(6), 67(3), 72 or 74 of this Act falls on a Saturday, Sunday or court holiday, such period shall extend to and include the next day which is not a Saturday, Sunday or court holiday.

VALID FROM 01/02/2005

Adjournment and alteration of diets

[[F76]**[**[F77]75A Adjournment and alteration of diets

(1) This section applies where any diet has been fixed in any proceedings on indictment.

(2) The court may, if it considers it appropriate to do so, adjourn the diet.

(3) However—

(a) in the case of a trial diet, the court may adjourn the diet under subsection (2) above only if the indictment is not brought to trial at the diet;

(b) if the court adjourns any diet under that subsection by reason only that, following enquiries for the purpose of ascertaining whether the accused has engaged a solicitor for the purposes of the conduct of his defence at or for the purposes of a preliminary hearing or at a trial, it appears to the court that he has not done so, the adjournment shall be for a period of not more than 48 hours.

(4) A trial diet in the High Court may be adjourned under subsection (2) above to a diet to be held at a sitting of the Court in another place.

(5) The court may, on the application of any party to the proceedings made at any time before commencement of any diet—

(a) discharge the diet; and

(b) fix a new diet for a date earlier or later than that for which the discharged diet was fixed.

(6) Before determining an application under subsection (5) above, the court shall give the parties an opportunity to be heard.

(7) However, where all the parties join in an application under that subsection, the court may determine the application without hearing the parties and, accordingly, may dispense with any hearing previously appointed for the purpose of subsection (6) above.

(8) Where there is a hearing for the purpose of subsection (6) above, the accused shall attend it unless the court permits the hearing to proceed notwithstanding the absence of the accused.

(9) In appointing a new trial diet under subsection (5)(b) above, the court—

(a) shall have regard to the state of preparation of the prosecutor and the accused with respect to their cases and, in particular, to the likelihood of the case being ready to proceed to trial on the date to be appointed for the trial diet; and

(b) may, if it appears to the court that there are any preliminary pleas, preliminary issues or other matters which require to be, or could with advantage be, disposed of or ascertained before the trial, appoint a diet to be held before the trial diet for the purpose of disposing of or, as the case may be, ascertaining them.

(10) A date for a new diet may be fixed under subsection (5)(b) above notwithstanding that the holding of the diet on that date would result in any provision of this Act as to the minimum or maximum period within which the diet is to be held or to commence not being complied with.

(11) In subsections (5) to (9) above, "the court" means—

(a) in the case of proceedings in the High Court, a single judge of that Court; and

(b) in the case of proceedings in the sheriff court, that court.

(12) For the purposes of subsection (5) above—

(a) a diet other than a trial diet shall be taken to commence when it is called; and

(b) a trial diet shall be taken to commence when the jury is sworn.**]**

Textual Amendments

F76 S. 75A and crossheading inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 15**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

F77 S. 75A and crossheading inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 15**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

VALID FROM 10/12/2007

[F78 75B Refixing diets

(1) This section applies where in any proceedings on indictment any diet has been fixed for a non-sitting day.

(2) The court may at any time before the non-sitting day—

(a) discharge the diet; and

(b) fix a new diet for a date earlier or later than that for which the discharged diet was fixed.

(3) That is, by acting—

(a) of the court's own accord; and

(b) without the need for a hearing for the purpose.

(4) In the case of a trial diet—

(a) the prosecutor;

(b) the accused,

shall be entitled to an adjournment of the new diet fixed if the court is satisfied that it is not practicable for that party to proceed with the case on that date.

(5) The power of the court under subsection (1) above is not exercisable for the sole purpose of ensuring compliance with a time limit applying in the proceedings.

(6) In subsections (1) and (2) above, a "non-sitting day" is a day on which the court is under this Act not required to sit.

(7) In subsections (2) to (5) above, "the court" means—

(a) in the case of proceedings in the High Court, a single judge of that Court;

(b) in the case of proceedings in the sheriff court, that court.**]]**

Textual Amendments

F76 S. 75A and crossheading inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 15**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

F78 S. 75B inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 39(1)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

Plea of guilty

76 Procedure where accused desires to plead guilty.

(1) Where an accused intimates in writing to the Crown Agent that he intends to plead guilty and desires to have his case disposed of at once, the accused may be served with an indictment (unless one has already been served) and a notice to appear at a diet of the appropriate court not less than four clear days after the date of the notice; and it shall not be necessary to lodge or give notice of any list of witnesses or productions.

(2) In subsection (1) above, "appropriate court" means—

(a) in a case where at the time of the intimation mentioned in that subsection an indictment had not been served, either the High Court or the sheriff court; and

(b) in any other case, the court specified in the notice served under section 66(6) of this Act on the accused.

(3) If at any such diet the accused pleads not guilty to the charge or pleads guilty only to a part of the charge, and the prosecutor declines to accept such restricted plea, the diet shall be deserted*pro loco et tempore* and thereafter the cause may proceed in accordance with the other provisions of this Part of this Act; except that in a case mentioned in paragraph (b) of subsection (2) above the court may postpone the trial diet and the period of such postponement shall not count towards any time limit applying in respect of the case.

77 Plea of guilty.

(1) Where at any diet the accused tenders a plea of guilty to the indictment or any part thereof he shall do so in open court and, subject to section 70(7) of this Act, shall, if he is able to do so, sign a written copy of the plea; and the judge shall countersign such copy.

(2) Where the plea is to part only of the charge and the prosecutor does not accept the plea, such non-acceptance shall be recorded.

(3) Where an accused charged on indictment with any offence tenders a plea of guilty to any other offence of which he could competently be found guilty on the trial of the indictment, and that plea is accepted by the prosecutor, it shall be competent to convict the accused of the offence to which he has so pled guilty and to sentence him accordingly.

Notice by accused

78 Special defences, incrimination and notice of witnesses, etc.

(1) It shall not be competent for an accused to state a special defence or to lead evidence calculated to exculpate the accused by incriminating a co-accused unless—

(a) a plea of special defence or, as the case may be, notice of intention to lead such evidence has been lodged and intimated in writing in accordance with subsection (3) below—

(i) where the accused is cited to the High Court for the trial diet, to the Crown Agent; and

(ii) where he is cited to the sheriff court for the trial diet, to the procurator fiscal,

and to any co-accused not less than 10 clear days before the trial diet; or

(b) the court, on cause shown, otherwise directs.

(2) Subsection (1) above shall apply to a defence of automatism or coercion as if it were a special defence.

(3) A plea or notice is lodged and intimated in accordance with this subsection—

(a) where the accused is cited to the High Court for the trial diet, by lodging the plea or notice with the Clerk of Justiciary and by intimating the plea or notice to the Crown Agent and to any co-accused not less than 10 clear days before the trial diet;

(b) where the accused is cited to the sheriff court for the trial diet, by lodging the plea or notice with the sheriff clerk and by intimating it to the procurator fiscal and to any co-accused at or before the first diet.

(4) It shall not be competent for the accused to examine any witnesses or to put in evidence any productions not included in the lists lodged by the prosecutor unless—

(a) written notice of the names and addresses of such witnesses and of such productions has been given—

(i) where the case is to be tried in the sheriff court, to the procurator fiscal of the district of the trial diet at or before the first diet; and

(ii) where the case is to be tried in the High Court, to the Crown Agent at least ten clear days before the day on which the jury is sworn; or

(b) the court, on cause shown, otherwise directs.

(5) A copy of every written notice required by subsection (4) above shall be lodged by the accused with the sheriff clerk of the district in which the trial diet is to be held, or in any case the trial diet of which is to be held in the High Court in Edinburgh with the Clerk of Justiciary, at or before the trial diet, for the use of the court.

79 Preliminary pleas.

(1) Except by leave of the court on cause shown, no application, matter or point mentioned in subsection (1) of section 72 of this Act or that subsection as applied by section 71 of this Act shall be made, raised or submitted by an accused unless his intention to do so has been stated in a notice under the said subsection (1) or, as the case may be, under subsection (2) of the said section 71.

(2) No discrepancy, error or deficiency such as is mentioned in paragraph (a)(ii) of subsection (1) of the said section 72 or that subsection as applied by the said section 71 shall entitle the accused to object to plead to the indictment unless the court is satisfied that the discrepancy, error or deficiency tended substantially to mislead and prejudice the accused.

VALID FROM 01/02/2005

[F79 79A Objections to admissibility of evidence raised after first diet or preliminary hearing

(1) This section applies where a party seeks to raise an objection to the admissibility of any evidence after—

(a) in proceedings in the High Court, the preliminary hearing; or

(b) in proceedings on indictment in the sheriff court, the first diet.

(2) The court shall not, under section 79(1) of this Act, grant leave for the objection to be raised if the party seeking to raise it has not given written notice of his intention to do so to the other parties.

(3) However, the court may, where the party seeks to raise the objection after the commencement of the trial, dispense with the requirement under subsection (2) above for written notice to be given.

(4) Where the party seeks to raise the objection after the commencement of the trial, the court shall not, under section 79(1) of this Act, grant leave for the objection to be raised unless it considers that it could not reasonably have been raised before that time.

(5) Where the party seeks to raise the objection before the commencement of the trial and the court, under section 79(1), grants leave for it to be raised, the court shall—

(a) if it considers it appropriate to do so, appoint a diet to be held before the commencement of the trial for the purpose of disposing of the objection; or

(b) dispose of the objection at the trial diet.

(6) In appointing a diet under subsection (5)(a) above, the court may postpone the trial diet for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.

(7) The accused shall appear at any diet appointed under subsection (5)(a) above.

(8) For the purposes of this section, the trial shall be taken to commence when the jury is sworn.**]**

Textual Amendments

F79 S. 79A inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 14(2)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1

Alteration, etc, of diet

80 Alteration and postponement of trial diet.

(1) Where an indictment is not brought to trial at the trial diet and a warrant for a subsequent sitting of the court on a day within two months after the date of the trial diet has been issued under section 66(1) of this Act by the clerk of court, the court

may adjourn the trial diet to the subsequent sitting, and the warrant shall have effect as if the trial diet had originally been fixed for the date of the subsequent sitting.

(2) At any time before the trial diet, a party may apply to the court before which the trial is to take place for postponement of the trial diet.

(3) Subject to subsection (4) below, after hearing all the parties the court may discharge the trial diet and either fix a new trial diet or give leave to the prosecutor to serve a notice fixing a new trial diet.

(4) Where all the parties join in an application to postpone the trial diet, the court may proceed under subsection (3) above without hearing the parties.

(5) Where there is a hearing under this section the accused shall attend it, unless the court permits the hearing to proceed notwithstanding the absence of the accused.

(6) In subsection (5) above, the reference to the accused shall, without prejudice to section 6(c) of the [M40]Interpretation Act 1978, in any case where there is more than one accused include a reference to all of them.

Marginal Citations
M40 1978 c.30.

81 Procedure where trial does not take place.

(1) Where at the trial diet—
(a) the diet has been deserted *pro loco et tempore* for any cause; or
(b) an indictment is for any cause not brought to trial and no order has been given by the court postponing such trial or appointing it to be held at a subsequent date at some other sitting of the court,

it shall be lawful at any time within nine clear days after the last day of the sitting in which the trial diet was to be held to give notice to the accused on another copy of the indictment to appear to answer the indictment at a further diet either in the High Court or in the sheriff court when the charge is one that can be lawfully tried in that court, notwithstanding that the original citation to a trial diet was to a different court.

(2) Without prejudice to subsection (1) above, where a trial diet has been deserted *pro loco et tempore* and the court has appointed a further trial diet to be held on a subsequent date at the same sitting the accused shall require to appear and answer the indictment at that further diet.

(3) The prosecutor shall not raise a fresh libel in a case where the court has deserted the trial *simpliciter* and its decision in that regard has not been reversed on appeal.

(4) The notice referred to in subsection (1) above shall be in the form prescribed by Act of Adjournal or as nearly as may be in such form.

(5) The further diet specified in the notice referred to in subsection (1) above shall be not earlier than nine clear days from the giving of the notice.

(6) On or before the day on which notice referred to in subsection (1) above is given, a list of jurors shall be prepared [F80]. . .and kept by the sheriff clerk of the district to which the notice applies in the manner provided in section **[**[F81]85(2)**]** of this Act.

(7) The warrant issued under section 66(1) of this Act shall be sufficient warrant for the citation of accused and witnesses to the further diet.

Textual Amendments

F80 Word in s. 81(6) repealed (1.8.1997) by 1997 c. 48, s. 62(1)(2), Sch. 1 para. 21(11)(a), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F81 Words in s. 81(6) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(11)(b)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

82 Desertion or postponement where accused in custody.

Where—

(a) a diet is deserted *pro loco et tempore*;

(b) a diet is postponed or adjourned; or

(c) an order is issued for the trial to take place at a different place from that first given notice of,

the warrant of committal on which the accused is at the time in custody till liberated in due course of law shall continue in force.

83 Transfer of sheriff court solemn proceedings.

(1) Where an accused person has been cited to attend a sitting of the sheriff court the prosecutor may, at any time before the commencement of his trial, apply to the sheriff to **[**F82adjourn the trial and transfer it to a sitting of a sheriff court, appointed as mentioned in section 66(1) of this Act,**]** in any other district in that sheriffdom.

(2) On an application under subsection (1) above the sheriff may—

(a) after giving the accused or his counsel or solicitor an opportunity to be heard; or

(b) on the joint application of the parties,

[F83adjourn the trial and**]**make an order for the transfer of the **[**F84trial as mentioned in subsection (1) above**]**.

[F85(3) Where a warrant to cite any person to attend a sitting of the sheriff court has been issued by the sheriff clerk under section 66(1) of this Act and the trial has been adjourned and transferred by an order under subsection (2) above, the warrant shall have effect as if the trial diet had originally been fixed for the court, and the date of the sitting of that court, to which the trial is so transferred.**]**

Textual Amendments

F82 Words in s. 83(1) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(12)(a)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F83 Words in s. 83(2) inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(12)(b)(i)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F84 Words in s. 83(2) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(12)(b)(ii)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F85 S. 83(3) inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(12)(c)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

VALID FROM 01/02/2005

[F86 Continuation of trial diet in the High Court

Textual Amendments

F86 S. 83A and crossheading inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 5**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

Continuation of trial diet in the High Court

[F87 83A (1) Where, in any case which is to be tried in the High Court, the trial diet does not commence on the day appointed for the holding of the diet, the indictment shall fall.

(2) However, where, in appointing a day for the holding of the trial diet, the Court has indicated that the diet is to be a floating diet, the diet and, if it is adjourned, the adjourned diet may, without having been commenced, be continued from sitting day to sitting day—

(a) by minute, in such form as may be prescribed by Act of Adjournal, signed by the Clerk of Justiciary; and

(b) up to such maximum number of sitting days after the day originally appointed for the trial diet as may be so prescribed.

(3) If such a trial diet or adjourned diet is not commenced by the end of the last sitting day to which it may be continued by virtue of subsection (2)(b) above, the indictment shall fall.

(4) For the purposes of this section, a trial diet or adjourned trial diet shall be taken to commence when it is called.

(5) In this section, "sitting day" means any day on which the court is sitting, but does not include any Saturday or Sunday or any day which is a court holiday.**]]**

Textual Amendments

F87 S. 83A and crossheading inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 5**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

Jurors for sittings

84 Juries: returns of jurors and preparation of lists.

(1) For the purposes of a trial, the sheriff principal shall return such number of jurors as he thinks fit or, in relation to a trial in the High Court, such other number as the Lord Justice Clerk or any Lord Commissioner of Justiciary may direct.

(2) The Lord Justice General, whom failing the Lord Justice Clerk, may give directions as to the areas from which and the proportions in which jurors are to be summoned for trials to be held in the High Court, and for any such trial the sheriff principal of the sheriffdom in which the trial is to take place shall requisition the required number of jurors from the areas and in the proportions so specified.

(3) Where a sitting of the High Court is to be held at a town in which the High Court does not usually sit, the jury summoned to try any case in such a sitting shall be summoned from the list of potential jurors of the sheriff court district in which the town is situated.

(4) For the purpose of a trial in the sheriff court, the clerk of court shall be furnished with a list of names from lists of potential jurors of the sheriff court district in which the court is held containing the number of persons required.

(5) The sheriff principal, in any return of jurors made by him to a court, shall take the names in regular order, beginning at the top of the list of potential jurors in each of the sheriff court districts, as required; and as often as a juror is returned to him, he shall mark or cause to be marked, in the list of potential jurors of the respective sheriff court districts the date when any such juror was returned to serve; and in any such return he shall commence with the name immediately after the last in the preceding return, without regard to the court to which the return was last made, and taking the subsequent names in the order in which they are entered, as directed by this subsection, and so to the end of the lists respectively.

(6) Where a person whose name has been entered in the lists of potential jurors dies, or ceases to be qualified to serve as a juror, the sheriff principal, in making returns of jurors in accordance with the [M41]Jurors (Scotland) Act 1825, shall pass over the name of that person, but the date at which his name has been so passed over, and the reason therefor, shall be entered at the time in the lists of potential jurors.

(7) Only the lists returned in accordance with this section by the sheriffs principal to the clerks of court shall be used for the trials for which they were required.

(8) The persons to serve as jurors at sittings of the High Court shall be listed and their names and addresses shall be inserted in one roll to be signed by the judge, and the list made up under this section shall be known as the "list of assize".

(9) When more than one case is set down for trial at a sitting of the High Court, it shall not be necessary to prepare more than one list of assize, and such list shall be authenticated by the signature of a judge of the Court, and shall be the list of assize for the trial of all parties cited to that particular sitting; and the persons included in such list shall be summoned to serve generally for the trials of all the accused cited to the sitting, and only one general execution of citation shall be returned against them; and a copy of the list of assize, certified by one of the clerks of court, shall have the like effect, for all purposes for which the list may be required, as the principal list of assize authenticated as aforesaid.

(10) No irregularity in—

(a) making up the lists in accordance with the provisions of this Act;
(b) transmitting the lists;
(c) the warrant of citation;
(d) summoning jurors; or
(e) in returning any execution of citation,

shall constitute an objection to jurors whose names are included in the jury list, subject to the ruling of the court in relation to the effect of an objection as to any criminal act by which jurors may be returned to serve in any case contrary to this Act or the [M42]Jurors (Scotland) Act l825.

Marginal Citations

M41 6 Geo. 4. 1825 c.22.

M42 6 Geo 4. 1825 c.22.

85 Juries: citation and attendance of jurors.

(1) It shall not be necessary to serve any list of jurors upon the accused, [F88]. . ..

[[F89](2) A list of jurors shall—

(a) contain not less than 30 names;

(b) be prepared under the directions of the clerk of the court before which the trial is to take place;

(c) be kept at the office of the sheriff clerk of the district in which the court of the trial diet is situated; and

(d) be headed "List of Assize for the sitting of the High Court of Justiciary (or the sheriff court of». at».) on the». of».".

(2A) The clerk of the court before which the trial is take place shall, on an application made to him by or on behalf of an accused, supply the accused, free of charge, on the day on which the trial diet is called, and before the oath has been administered to the jurors for the trial of the accused, with a copy of a list of jurors prepared under subsection (2) above.

(2B) Where an accused has been supplied under subsection (2A) above with a list of jurors—

(a) neither he nor any person acting on his behalf shall make a copy of that list, or any part thereof; and

(b) he or his representative shall return the list to the clerk of the court after the oath has been administered to the jurors for his trial.

(2C) A person who fails to comply with subsection (2B) above shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.**]**

(3) It shall not be necessary to summon all the jurors contained in any list of jurors under this Act, but it shall be competent to summon such jurors only, commencing from the top of the list, as may be necessary to ensure a sufficient number for the trial of the cases which remain for trial at the date of the citation of the jurors, and such number shall be fixed by the clerk of the court in which the trial diet is to be called, or in any case in the High Court by the Clerk of Justiciary, and the jurors who are not so summoned shall be placed upon the next list issued, until they have attended to serve.

(4) The sheriff clerk of the sheriffdom in which a sitting of the High Court is to be held or the sheriff clerk of the sheriff court district in which any juror is to be cited where the citation is for a trial before a sheriff, shall fill up and sign a proper citation addressed to each such juror, and shall cause the same to be transmitted to him by letter, sent to him at his place of residence as stated in the lists of potential jurors by registered

post or recorded delivery or to be served on him by an officer of law; and a certificate under the hand of such sheriff clerk of the citation of any jurors or juror in the manner provided in this subsection shall be a legal citation.

(5) The sheriff clerk of the sheriffdom in which a sitting of the High Court is to be held shall issue citations to the whole jurors required for the sitting, whether the jurors reside in that or in any other sheriffdom.

(6) Persons cited to attend as jurors may, unless they have been excused in respect thereof under section 1 of the [M43]Law Reform (Miscellaneous Provisions) (Scotland) Act l980, be fined up to level 3 on the standard scale if they fail to attend in compliance with the citation.

(7) A fine imposed under subsection (6) above may, on application, be remitted—

(a) by a Lord Commissioner of Justiciary where imposed in the High Court;

(b) by the sheriff court where imposed in the sheriff court,

and no court fees or expenses shall be exigible in respect of any such application.

(8) A person shall not be exempted by sex or marriage from the liability to serve as a juror.

Textual Amendments

F88 Words in s. 85(1) repealed (1.8.1997) by 1997 c. 48, ss. 58(2), 62(2), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F89 S. 85(2)(2A)(2B)(2C) substituted (1.8.1997) for s. 85(2) by 1997 c. 48, **s. 58(3)**; S.I. 1997/1714, art. 3, **Sch.** (subject to arts. 4, 5)

Marginal Citations

M43 1980 c.55.

86 Jurors: excusal and objections.

(1) Where, before a juror is sworn to serve, the parties jointly apply for him to be excused the court shall, notwithstanding that no reason is given in the application, excuse that juror from service.

(2) Nothing in subsection (1) above shall affect the right of the accused or the prosecutor to object to any juror on cause shown.

(3) If any objection is taken to a juror on cause shown and such objection is founded on the want of sufficient qualification as provided by section 1(1) of the [M44]Law Reform (Miscellaneous Provisions) (Scotland) Act 1980, such objection shall be proved only by the oath of the juror objected to.

(4) No objection to a juror shall be competent after he has been sworn to serve.

Marginal Citations

M44 1980 c.55.

Non-availability of judge

87 Non-availability of judge.

(1) Where the court is unable to proceed owing to the death, illness or absence of the presiding judge, the clerk of court may convene the court (if necessary) and—

(a) in a case where no evidence has been led, adjourn the diet and any other diet appointed for that sitting to—

(i) a time later the same day, or a date not more than seven days later, when he believes a judge will be available; or

(ii) a later sitting not more than two months after the date of the adjournment; or

(b) in a case where evidence has been led—

(i) adjourn the diet and any other diet appointed for that sitting to a time later the same day, or a date not more than seven days later, when he believes a judge will be available; or

(ii) with the consent of the parties, desert the diet *pro loco et tempore*.

(2) Where a diet has been adjourned under sub-paragraph (i) of either paragraph (a) or paragraph (b) of subsection (1) above the clerk of court may, where the conditions of that subsection continue to be satisfied, further adjourn the diet under that sub-paragraph; but the total period of such adjournments shall not exceed seven days.

(3) Where a diet has been adjourned under subsection (1)(b)(i) above the court may, at the adjourned diet—

(a) further adjourn the diet; or

(b) desert the diet *pro loco et tempore*.

(4) Where a diet is deserted in pursuance of subsection (1)(b)(ii) or (3)(b) above, the Lord Advocate may raise and insist in a new indictment, and—

(a) where the accused is in custody it shall not be necessary to grant a new warrant for his incarceration, and the warrant or commitment on which he is at the time in custody till liberation in due course of law shall continue in force; and

(b) where the accused is at liberty on bail, his bail shall continue in force.

VALID FROM 01/02/2005

[F90 87A Disposal of preliminary matters at trial diet

Where—

(a) any preliminary plea or issue; or

(b) in a case to be tried in the High Court, any application, notice or other matter referred to in section 72(6)(b)(iii) or (iv) of this Act,

is to be disposed of at the trial diet, it shall be so disposed of before the jury is sworn, unless, where it is a preliminary issue consisting of an objection to the admissibility of any evidence, the court at the trial diet considers it is not capable of being disposed of before then.**]**

Textual Amendments

F90 S. 87A inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 3), **ss. 13(2)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1

Jury for trial

88 Plea of not guilty, balloting and swearing of jury, etc.

(1) Where the accused pleads not guilty, the clerk of court shall record that fact and proceed to ballot the jury.

(2) The jurors for the trial shall be chosen in open court by ballot from the list of persons summoned in such manner as shall be prescribed by Act of Adjournal, and the persons so chosen shall be the jury to try the accused, and their names shall be recorded in the minutes of the proceedings.

(3) It shall not be competent for the accused or the prosecutor to object to a juror on the ground that the juror has not been duly cited to attend.

(4) Notwithstanding subsection (1) above, the jurors chosen for any particular trial may, when that trial is disposed of, without a new ballot serve on the trials of other accused, provided that—

(a) the accused and the prosecutor consent;

(b) the names of the jurors are contained in the list of jurors; and

(c) the jurors are duly sworn to serve on each successive trial.

(5) When the jury has been balloted, the clerk of court shall inform the jury of the charge against the accused—

(a) by reading the words of the indictment (with the substitution of the third person for the second); or

(b) if the presiding judge, because of the length or complexity of the indictment, so directs, by reading to the jury a summary of the charge approved by the judge,

and copies of the indictment shall be provided for each member of the jury without lists of witnesses or productions.

(6) After reading the charge as mentioned in subsection (5) above and any special defence as mentioned in section 89(1) of this Act, the clerk of court shall administer the oath in common form.

(7) The court may excuse a juror from serving on a trial where the juror has stated the ground for being excused in open court.

(8) Where a trial which is proceeding is adjourned from one day to another, the jury shall not be secluded during the adjournment, unless, on the motion of the prosecutor or the accused or *ex proprio motu* the court sees fit to order that the jury be kept secluded.

Modifications etc. (not altering text)

C19 S. 88(1) excluded by S.I. 1996/513, Sch. 2 rule 14.1A(1) (as inserted (1.6.2010) by Act of Adjournal (Criminal Procedure Rules Amendment) (Miscellaneous) 2010 (S.S.I. 2010/184), **para. 3**)

89 Jury to be informed of special defence.

(1) Subject to subsection (2) below, where the accused has lodged a plea of special defence, the clerk of court shall, after informing the jury, in accordance with section 88(5) of this Act, of the charge against the accused, and before administering the oath, read to the jury the plea of special defence.

(2) Where the presiding judge on cause shown so directs, the plea of special defence shall not be read over to the jury in accordance with subsection (1) above; and in any such case the judge shall inform the jury of the lodging of the plea and of the general nature of the special defence.

(3) Copies of a plea of special defence shall be provided for each member of the jury.

90 Death or illness of jurors.

(1) Where in the course of a trial—

(a) a juror dies; or

(b) the court is satisfied that it is for any reason inappropriate for any juror to continue to serve as a juror,

the court may in its discretion, on an application made by the prosecutor or an accused, direct that the trial shall proceed before the remaining jurors (if they are not less than twelve in number), and where such direction is given the remaining jurors shall be deemed in all respects to be a properly constituted jury for the purpose of the trial and shall have power to return a verdict accordingly whether unanimous or, subject to subsection (2) below, by majority.

(2) The remaining jurors shall not be entitled to return a verdict of guilty by majority unless at least eight of their number are in favour of such verdict and if, in any such case, the remaining jurors inform the court that—

(a) fewer than eight of their number are in favour of a verdict of guilty; and

(b) there is not a majority in favour of any other verdict,

they shall be deemed to have returned a verdict of not guilty.

VALID FROM 01/02/2005

[F91 Obstructive witnesses

Textual Amendments

F91 Ss. 90A-90E inserted (1.2.2005 for specified purposes and otherwise prosp.) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 11**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (with transitional provision in arts. 3-5)

90A Apprehension of witnesses in proceedings on indictment

(1) In any proceedings on indictment, the court may, on the application of any of the parties, issue a warrant for the apprehension of a witness if subsection (2) or (3) below applies in relation to the witness.

(2) This subsection applies if the witness, having been duly cited to any diet in the proceedings, deliberately and obstructively fails to appear at the diet.

(3) This subsection applies if the court is satisfied by evidence on oath that the witness is being deliberately obstructive and is not likely to attend to give evidence at any diet in the proceedings without being compelled to do so.

(4) For the purposes of subsection (2) above, a witness who, having been duly cited to any diet, fails to appear at the diet is to be presumed, in the absence of any evidence to the contrary, to have so failed deliberately and obstructively.

(5) An application under subsection (1) above—

(a) may be made orally or in writing;

(b) if made in writing—

(i) shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form; and

(ii) may be disposed of in court or in chambers after such inquiry or hearing (if any) as the court considers appropriate.

(6) A warrant issued under this section shall be in such form as may be prescribed by Act of Adjournal or as nearly as may be in such form.

(7) A warrant issued under this section in the form mentioned in subsection (6) above shall imply warrant to officers of law—

(a) to search for and apprehend the witness in respect of whom it is issued;

(b) to bring the witness before the court;

(c) in the meantime, to detain the witness in a police station, police cell or other convenient place; and

(d) so far as is necessary for the execution of the warrant, to break open shut and lockfast places.

(8) It shall not be competent, in any proceedings on indictment, for a court to issue a warrant for the apprehension of a witness otherwise than in accordance with this section.

(9) A person apprehended under a warrant issued under this section shall wherever practicable be brought before the court not later than in the course of the first day on which—

(a) in the case of a warrant issued by a single judge of the High Court, that Court;

(b) in any other case, the court,

is sitting after he is taken into custody.

(10) In this section and section 90B, "the court" means, except where the context requires otherwise—

(a) where the witness is to give evidence in proceedings in the High Court, a single judge of that Court; or

(b) where the witness is to give evidence in proceedings on indictment in the sheriff court, any sheriff court with jurisdiction in relation to the proceedings.

90B Orders in respect of witnesses apprehended under section 90A

(1) Where a witness is brought before the court in pursuance of a warrant issued under section 90A of this Act, the court shall, after giving the parties and the witness an opportunity to be heard, make an order—

(a) detaining the witness until the conclusion of the diet at which the witness is to give evidence;

(b) releasing the witness on bail; or

(c) liberating the witness.

(2) The court may make an order under subsection (1)(a) or (b) above only if it is satisfied that—

(a) the order is necessary with a view to securing that the witness appears at the diet at which the witness is to give evidence; and

(b) it is appropriate in all the circumstances to make the order.

(3) Subsection (1) above is without prejudice to any power of the court to—

(a) make a finding of contempt of court in respect of any failure of a witness to appear at a diet to which he has been duly cited; and

(b) dispose of the case accordingly.

(4) Where—

(a) an order under subsection (1)(a) above has been made in respect of a witness; and

(b) at, but before the conclusion of, the diet at which the witness is to give evidence, the court in which the diet is being held excuses the witness,

that court, on excusing the witness, may recall the order under subsection (1)(a) above and liberate the witness.

(5) On making an order under subsection (1)(b) above in respect of a witness, the court shall impose such conditions as it considers necessary with a view to securing that the witness appears at the diet at which he is to give evidence.

(6) However, the court may not impose as such a condition a requirement that the witness or a cautioner on his behalf deposit a sum of money in court.

(7) Where the court makes an order under subsection (1)(a) above in respect of a witness, the court shall, on the application of the witness—

(a) consider whether the imposition of a remote monitoring requirement would enable it to make an order under subsection (1)(b) above releasing the witness on bail subject to a movement restriction condition; and

(b) if so—

(i) make an order under subsection (1)(b) above releasing the witness on bail subject to such a condition (as well as such other conditions required to be imposed under subsection (5) above); and

(ii) in the order, impose, as a further condition under subsection (5) above, a remote monitoring requirement.

(8) Subsections (7) to (19) of section 24A of this Act apply in relation to remote monitoring requirements imposed under subsection (7)(b)(ii) above and to the imposing of such requirements as they apply to remote monitoring requirements imposed under section 24A(1) or (2) of this Act and the imposing of such requirements, but with the following modifications—

(a) references to a remote monitoring requirement imposed under section 24A(1) or (2) of this Act shall be read as if they included references to a remote monitoring requirement imposed under subsection (7)(b)(ii) above;

(b) references to the accused shall be read as if they were references to the witness in respect of whom the order under subsection (1)(b) above is made.

(9) The powers conferred and duties imposed by sections 24B to 24D of this Act are exercisable in relation to remote monitoring requirements imposed under subsection (7)(b)(ii) above as they are exercisable in relation to remote monitoring requirements imposed under subsection (1) or (2) of section 24A of this Act; and—

(a) references in those sections to remote monitoring requirements shall be read accordingly; and

(b) references to the imposition of any requirement as a further condition of bail shall be read as if they were references to the imposition of the requirement as a further condition under subsection (5) above.

(10) Section 25 of this Act (which makes provision for an order granting bail to specify the conditions imposed on bail and the accused's proper domicile of citation) shall apply in relation to an order under subsection (1)(b) above as it applies to an order granting bail, but with the following modifications—

(a) references to the accused shall be read as if they were references to the witness in respect of whom the order under subsection (1)(b) above is made;

(b) references to the order granting bail shall be read as if they were references to the order under subsection (1)(b) above;

(c) subsection (3) shall be read as if for the words from "relating" to "offence" in the third place where it occurs there were substituted at which the witness is to give evidence.

(11) In this section—

(a) "a movement restriction condition" means, in relation to a witness released on bail under subsection (1)(b) above, a condition imposed under subsection (5) above restricting the witness's movements, including such a condition requiring the witness to be, or not to be, in any place or description of place for, or during, any period or periods or at any time; and

(b) "a remote monitoring requirement" means, in relation to a movement restriction condition, a requirement that compliance with the condition be remotely monitored.

90C Breach of bail under section 90B(1)(b)

(1) A witness who, having been released on bail by virtue of an order under subsection (1)(b) of section 90B of this Act, fails without reasonable excuse—

(a) to appear at any diet to which he has been cited; or

(b) to comply with any condition imposed under subsection (5) of that section,

shall be guilty of an offence and liable on conviction on indictment to the penalties specified in subsection (2) below.

(2) Those penalties are—

(a) a fine; and

(b) imprisonment for a period not exceeding two years.

(3) Subsection (4) below applies in proceedings against a witness for an offence under paragraph (b) of subsection (1) above where the condition referred to in that paragraph is—

(a) a movement restriction condition (within the meaning of section 90B(11) of this Act) in respect of which a remote monitoring requirement has been imposed under section 90B(7)(b)(ii) of this Act; or

(b) a requirement imposed under section 24D(3)(b)(as extended by section 90B(9)) of this Act.

(4) In proceedings in which this subsection applies, evidence of—

(a) in the case referred to in subsection (3)(a) above, the presence or absence of the witness at a particular place at a particular time; or

(b) in the case referred to in subsection (3)(b) above, any tampering with or damage to a device worn or carried by the witness for the purpose of remotely monitoring his whereabouts,

may, subject to subsections (7) and (8) below, be given by the production of the document or documents referred to in subsection (5) below.

(5) That document or those documents is or are a document or documents bearing to be—

(a) a statement automatically produced by a device specified in regulations made under section 24D(4)(as extended by section 90B(9)) of this Act by which the witness's whereabouts were remotely monitored; and

(b) a certificate signed by a person nominated for the purpose of this paragraph by the Scottish Ministers that the statement relates to—

(i) in the case referred to in subsection (3)(a) above, the whereabouts of the witness at the dates and times shown in the statement; or

(ii) in the case referred to in subsection (3)(b) above, any tampering with or damage to the device.

(6) The statement and certificate mentioned in subsection (5) above shall, when produced in the proceedings, be sufficient evidence of the facts set out in them.

(7) Neither the statement nor the certificate mentioned in subsection (5) above shall be admissible in evidence unless a copy of both has been served on the witness prior to the trial.

(8) Without prejudice to subsection (7) above, where it appears to the court that the witness has had insufficient notice of the statement or certificate, it may adjourn the trial or make an order which it thinks appropriate in the circumstances.

(9) In subsections (7) and (8), "the trial" means the trial in the proceedings against the witness referred to in subsection (3) above.

(10) Section 28 of this Act shall apply in respect of a witness who has been released on bail by virtue of an order under section 90B(1)(b) of this Act as it applies to an accused released on bail, but with the following modifications—

(a) references to an accused shall be read as if they were references to the witness;

(b) in subsection (2), the reference to the court to which the accused's application for bail was first made shall be read as if it were a reference to the court which made the order under section 90B(1)(b) of this Act in respect of the witness; and

(c) in subsection (4)—

(i) references to the order granting bail and original order granting bail shall be read as if they were references to the order under section 90B(1)(b) and the original such order respectively;

(ii) paragraph (a) shall be read as if at the end there were inserted "and make an order under section 90B(1)(a) or (c) of this Act in respect of the witness"; and

(iii) paragraph (c) shall be read as if for the words from "complies" to the end there were substituted "appears at the diet at which the witness is to give evidence".

90D Review of orders under section 90B(1)(a) or (b)

(1) Where a court has made an order under subsection (1)(a) of section 90B of this Act, the court may, on the application of the witness in respect of whom the order was made, on cause shown and after giving the parties and the witness an opportunity to be heard—

(a) recall the order; and

(b) make an order under subsection (1)(b) or (c) of that section in respect of the witness.

(2) Where a court has made an order under subsection (1)(b) of section 90B of this Act, the court may, after giving the parties and the witness an opportunity to be heard—

(a) on the application of the witness in respect of whom the order was made and on cause shown—

(i) review the conditions imposed under subsection (5) of that section at the time the order was made; and

(ii) make a new order under subsection (1)(b) of that section and impose different conditions under subsection (5) of that section;

(b) on the application of the party who made the application under section 90A(1) of this Act in respect of the witness, review the order and the conditions imposed under subsection (5) of that section at the time the order was made, and

(i) recall the order and make an order under subsection (1)(a) of that section in respect of the witness; or

(ii) make a new order under subsection (1)(b) of that section and impose different conditions under subsection (5) of that section.

(3) The court may not review an order by virtue of subsection (2)(b) above unless the party making the application puts before the court material information which was not available to it when it made the order which is the subject of the application.

(4) An application under this section by a witness—

(a) where it relates to the first order made under section 90B(1)(a) or (b) of this Act in respect of the witness, shall not be made before the fifth day after that order is made;

(b) where it relates to any subsequent such order, shall not be made before the fifteenth day after the order is made.

(5) On receipt of an application under subsection (2)(b) above the court shall—

(a) intimate the application to the witness in respect of whom the order which is the subject of the application was made;

(b) fix a diet for hearing the application and cite the witness to attend the diet; and

(c) where it considers that the interests of justice so require, grant warrant to arrest the witness.

(6) Nothing in this section shall affect any right of a person to appeal against an order under section 90B(1).

90E Appeals in respect of orders under section 90B(1)

(1) Any of the parties specified in subsection (2) below may appeal to the High Court against—

(a) any order made under subsection (1)(a) or (c) of section 90B of this Act; or

(b) where an order is made under subsection (1)(b) of that section—

(i) the order;

(ii) any of the conditions imposed under subsection (5) of that section on the making of the order; or

(iii) both the order and any such conditions.

(2) The parties referred to in subsection (1) above are—

(a) the witness in respect of whom the order which is the subject of the appeal was made;

(b) the prosecutor; and

(c) the accused.

(3) A party making an appeal under subsection (1) above shall intimate it to the other parties specified in subsection (2) above and, for that purpose, intimation to the Lord Advocate shall be sufficient intimation to the prosecutor.

(4) 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.

(5) Where the witness in respect of whom the order which is the subject of an appeal under this section was made is under 21 years of age, section 51 of this Act shall apply to the High Court or, as the case may be, the Lord Commissioner of Justiciary when disposing of the appeal as it applies to a court when remanding or committing a person of the witness's age for trial or sentence.**]**

Trial

91 Trial to be continuous.

Every trial shall proceed from day to day until it is concluded unless the court sees cause to adjourn over a day or days.

92 Trial in presence of accused.

(1) Without prejudice to section 54 of this Act, and subject to subsection (2) below, no part of a trial shall take place outwith the presence of the accused.

(2) If during the course of his trial an accused so misconducts himself that in the view of the court a proper trial cannot take place unless he is removed, the court may order—

(a) that he is removed from the court for so long as his conduct makes it necessary; and

(b) that the trial proceeds in his absence,

but if he is not legally represented the court shall appoint counsel or a solicitor to represent his interests during such absence.

(3) From the commencement of the leading of evidence in a trial for rape or the like the judge may, if he thinks fit, cause all persons other than the accused and counsel and solicitors to be removed from the court-room.

93 Record of trial.

(1) The proceedings at the trial of any person who, if convicted, is entitled to appeal under Part VIII of this Act, shall be recorded by means of shorthand notes or by mechanical means.

(2) A shorthand writer shall—

(a) sign the shorthand notes taken by him of such proceedings and certify them as being complete and correct; and

(b) retain the notes.

(3) A person recording such proceedings by mechanical means shall—

(a) certify that the record is true and complete;

(b) specify in the certificate the proceedings or, as the case may be, the part of the proceedings to which the record relates; and

(c) retain the record.

(4) The cost of making a record under subsection (1) above shall be defrayed, in accordance with scales of payment fixed for the time being by Treasury, out of money provided by Parliament.

(5) In subsection (1) above "proceedings at the trial" means the whole proceedings including, without prejudice to that generality—

(a) discussions—

(i) on any objection to the relevancy of the indictment;

(ii) with respect to any challenge of jurors; and

(iii) on all questions arising in the course of the trial;

(b) the decision of the court on any matter referred to in paragraph (a) above;

(c) the evidence led at the trial;

(d) any statement made by or on behalf of the accused whether before or after the verdict;

(e) the judge's charge to the jury;

(f) the speeches of counsel or agent;

(g) the verdict of the jury;

(h) the sentence by the judge.

Modifications etc. (not altering text)

C20 S. 93(2)-(4) applied (3.11.2003 but only in respect of summary proceedings) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 21(6)**, 89; S.S.I. 2003/475, **art. 2**, Sch.

94 Transcripts of record and documentary productions.

(1) The Clerk of Justiciary may direct that a transcript of a record made under section 93(1) of this Act, or any part thereof, be made and delivered to him for the use of any judge.

(2) Subject to subsection (3) below, the Clerk of Justiciary shall, if requested to do so by—

(a) the Secretary of State; or

(b) any other person on payment of such charges as may be fixed for the time being by Treasury,

direct that such a transcript be made and sent to the person who requested it.

(3) The Secretary of State may, after consultation with the Lord Justice General, by order made by statutory instrument provide that in any class of proceedings specified in the order the Clerk of Justiciary shall only make a direction under subsection (2)(b) above if satisfied that the person requesting the transcript is of a class of person so specified and, if purposes for which the transcript may be used are so specified, intends to use it only for such a purpose; and different purposes may be so specified for different classes of proceedings or classes of person.

(4) Where subsection (3) above applies as respects a direction, the person to whom the transcript is sent shall, if purposes for which that transcript may be used are specified by virtue of that subsection, use it only for such a purpose.

(5) A statutory instrument containing an order under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) A direction under subsection (1) or (2) above may require that the transcript be made by the person who made the record or by such competent person as may be specified in the direction; and that person shall comply with the direction.

(7) A transcript made in compliance with a direction under subsection (1) or (2) above—

(a) shall be in legible form; and

(b) shall be certified by the person making it as being a correct and complete transcript of the whole or, as the case may be, the part of the record purporting to have been made and certified, and in the case of shorthand notes signed, by the person who made the record.

(8) The cost of making a transcript in compliance with a direction under subsection (1) or (2)(a) above shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of money provided by Parliament.

(9) The Clerk of Justiciary shall, on payment of such charges as may be fixed for the time being by the Treasury, provide a copy of any documentary production lodged in connection with an appeal under this Part of this Act to such of the following persons as may request it—

(a) the prosecutor;

(b) any person convicted in the proceedings;

(c) any other person named in, or immediately affected by, any order made in the proceedings; and

(d) any person authorised to act on behalf of any of the persons mentioned in paragraphs (a) to (c) above.

95 Verdict by judge alone.

(1) Where, at any time after the jury has been sworn to serve in a trial, the prosecutor intimates to the court that he does not intend to proceed in respect of an offence charged in the indictment, the judge shall acquit the accused of that offence and the trial shall proceed only in respect of any other offence charged in the indictment.

(2) Where, at any time after the jury has been sworn to serve in a trial, the accused intimates to the court that he is prepared to tender a plea of guilty as libelled, or such other plea as the Crown is prepared to accept, in respect of any offence charged in the indictment, the judge shall accept the plea tendered and shall convict the accused accordingly.

(3) Where an accused is convicted under subsection (2) above of an offence—

(a) the trial shall proceed only in respect of any other offence charged in the indictment; and

(b) without prejudice to any other power of the court to adjourn the case or to defer sentence, the judge shall not sentence him or make any other order competent following conviction until a verdict has been returned in respect of every other offence mentioned in paragraph (a) above.

96 Amendment of indictment.

(1) No trial shall fail or the ends of justice be allowed to be defeated by reason of any discrepancy or variance between the indictment and the evidence.

(2) It shall be competent at any time prior to the determination of the case, unless the court see just cause to the contrary, to amend the indictment by deletion, alteration or addition, so as to—

(a) cure any error or defect in it;

(b) meet any objection to it; or

(c) cure any discrepancy or variance between the indictment and the evidence.

(3) Nothing in this section shall authorise an amendment which changes the character of the offence charged, and, if it appears to the court 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 appears to the court to be just.

(4) An amendment made under this section shall be sufficiently authenticated by the initials of the clerk of the court.

97 No case to answer.

(1) Immediately after the close of the evidence for the prosecution, the accused may intimate to the court his desire to make a submission that he has no case to answer both—

(a) on an offence charged in the indictment; and

(b) on any other offence of which he could be convicted under the indictment.

(2) If, after hearing both parties, the judge is satisfied that the evidence led by the prosecution is insufficient in law to justify the accused being convicted of the offence charged in respect of which the submission has been made or of such other offence as is mentioned, in relation to that offence, in paragraph (b) of subsection (1) above, he shall acquit him of the offence charged in respect of which the submission has been made and the trial shall proceed only in respect of any other offence charged in the indictment.

(3) If, after hearing both parties, the judge is not satisfied as is mentioned in subsection (2) above, he shall reject the submission and the trial shall proceed, with the accused entitled to give evidence and call witnesses, as if such submission had not been made.

(4) A submission under subsection (1) above shall be heard by the judge in the absence of the jury.

VALID FROM 28/03/2011

[F92 97A Submissions as to sufficiency of evidence

(1) Immediately after one or other (but not both) of the appropriate events, the accused may make either or both of the submissions mentioned in subsection (2) in relation to an offence libelled in an indictment (the "indicted offence").

(2) The submissions are—

(a) that the evidence is insufficient in law to justify the accused's being convicted of the indicted offence or any other offence of which the accused could be convicted under the indictment (a "related offence"),

(b) that there is no evidence to support some part of the circumstances set out in the indictment.

(3) For the purposes of subsection (1), "the appropriate events" are—

(a) the close of the whole of the evidence,

(b) the conclusion of the prosecutor's address to the jury on the evidence.

(4) A submission made under this section must be heard by the judge in the absence of the jury.

Textual Amendments

F92 Ss. 97A-97D inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 73**, 206(1)

VALID FROM 28/03/2011

97B Acquittals etc. on section 97A(2)(a) submissions

(1) This section applies where the accused makes a submission of the kind mentioned in section 97A(2)(a).

(2) If the judge is satisfied that the evidence is insufficient in law to justify the accused's being convicted of the indicted offence, then—

(a) where the judge is satisfied that the evidence is also insufficient in law to justify the accused's being convicted of a related offence—

(i) the judge must acquit the accused of the indicted offence, and

(ii) the trial is to proceed only in respect of any other offence libelled in the indictment,

(b) where the judge is satisfied that the evidence is sufficient in law to justify the accused's being convicted of a related offence, the judge must direct that the indictment be amended accordingly.

(3) If the judge is not satisfied as is mentioned in subsection (2)—

(a) the judge must reject the submission, and

(b) the trial is to proceed as if the submission had not been made.

(4) The judge may make a decision under this section only after hearing both (or all) parties.

(5) An amendment made by virtue of this section must be sufficiently authenticated by the initials of the judge or the clerk of court.

(6) In this section, "indicted offence" and "related offence" have the same meanings as in section 97A.

Textual Amendments

F92 Ss. 97A-97D inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 73**, 206(1)

VALID FROM 28/03/2011

97C Directions etc. on section 97A(2)(b) submissions

(1) This section applies where the accused makes a submission of the kind mentioned in section 97A(2)(b).

(2) If the judge is satisfied that there is no evidence to support some part of the circumstances set out in the indictment, the judge must direct that the indictment be amended accordingly.

(3) If the judge is not satisfied as is mentioned in subsection (2)—

(a) the judge must reject the submission, and

(b) the trial is to proceed as if the submission had not been made.

(4) The judge may make a decision under this section only after hearing both (or all) parties.

(5) An amendment made by virtue of this section must be sufficiently authenticated by the initials of the judge or the clerk of court.

Textual Amendments

F92 Ss. 97A-97D inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 73**, 206(1)

VALID FROM 28/03/2011

97D No acquittal on "no reasonable jury" grounds

(1) A judge has no power to direct the jury to return a not guilty verdict on any charge on the ground that no reasonable jury, properly directed on the evidence, could convict on the charge.

(2) Accordingly, no submission based on that ground or any ground of like effect is to be allowed.**]**

Textual Amendments

F92 Ss. 97A-97D inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 73**, 206(1)

98 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.

99 Seclusion of jury to consider verdict.

(1) When the jury retire to consider their verdict, the clerk of court shall enclose the jury in a room by themselves and, except in so far as provided for, or is made necessary, by an instruction under subsection (4) below, neither he nor any other person shall be present with the jury after they are enclosed.

(2) Except in so far as is provided for, or is made necessary, by an instruction under subsection (4) below, until the jury intimate that they are ready to return their verdict—

(a) subject to subsection (3) below, no person shall visit the jury or communicate with them; and

(b) no juror shall come out of the jury room other than to receive or seek a direction from the judge or to make a request—

(i) for an instruction under subsection (4)(a), (c) or (d) below; or

(ii) regarding any matter in the cause.

(3) Nothing in paragraph (a) of subsection (2) above shall prohibit the judge, or any person authorised by him for the purpose, communicating with the jury for the purposes—

(a) of giving a direction, whether or not sought under paragraph (b) of that subsection; or

(b) responding to a request made under that paragraph.

(4) The judge may give such instructions as he considers appropriate as regards—

(a) the provision of meals and refreshments for the jury;
(b) the making of arrangements for overnight accommodation for the jury and for their continued seclusion if such accommodation is provided;
(c) the communication of a personal or business message, unconnected with any matter in the cause, from a juror to another person (or vice versa); or
(d) the provision of medical treatment, or other assistance, immediately required by a juror.

(5) If the prosecutor or any other person contravenes the provisions of this section, the accused shall be acquitted of the crime with which he is charged.

(6) During the period in which 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.

Verdict and conviction

100 Verdict of jury.

(1) The verdict of the jury, whether the jury are unanimous or not, shall be returned orally by the foreman of the jury unless the court directs a written verdict to be returned.

(2) Where the jury are not unanimous in their verdict, the foreman shall announce that fact so that the relative entry may be made in the record.

(3) The verdict of the jury may be given orally through the foreman of the jury after consultation in the jury box without the necessity for the jury to retire.

101 Previous convictions: solemn proceedings.

(1) Previous convictions against the accused shall not be laid before the jury, nor shall reference be made to them in presence of the jury before the verdict is returned.

(2) Nothing in subsection (1) above shall prevent the prosecutor—
(a) asking the accused questions tending to show that he has been convicted of an offence other than that with which he is charged, where he is entitled to do so under section 266 of this Act; or
(b) leading evidence of previous convictions where it is competent to do so under section 270 of this Act,

and nothing in this section or in section 69 of this Act shall prevent evidence of previous convictions being led in any case where such evidence is competent in support of a substantive charge.

(3) Previous convictions shall not be laid before the presiding judge until the prosecutor moves for sentence, and in that event the prosecutor shall lay before the judge a copy of the notice referred to in subsection (2) or (4) of section 69 of this Act.

(4) On the conviction of the accused it shall be competent for the court, subject to subsection (5) below, to amend a notice of previous convictions so laid by deletion or alteration for the purpose of curing any error or defect.

F93(5) . . . . . .

(6) Any conviction which is admitted in evidence by the court shall be entered in the record of the trial.

(7) 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.

(8) Where any such intimation as is mentioned in section 69 of this Act is given by the accused, it shall be competent to prove any previous conviction included in a notice under that section in the manner specified in section 285 of this Act, and the provisions of the said section shall apply accordingly.

Textual Amendments

F93 S. 101(5) repealed (1.8.1997) by 1997 c. 48, ss. 31, 62(2), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

VALID FROM 28/03/2011

[F94 101A Post-offence convictions etc.

(1) This section applies where an accused person is convicted of an offence ("offence O") on indictment.

(2) The court may, in deciding on the disposal of the case, have regard to—

(a) any conviction in respect of the accused which occurred on or after the date of offence O but before the date of conviction in respect of that offence,

(b) any of the alternative disposals in respect of the accused that are mentioned in subsection (3).

(3) Those alternative disposals are—

(a) a—

(i) fixed penalty under section 302(1) of this Act, or

(ii) compensation offer under section 302A(1) of this Act,

that has been accepted (or deemed to have been accepted) on or after the date of offence O but before the date of conviction in respect of that offence,

(b) a work order under section 303ZA(6) of this Act that has been completed on or after the date of offence O but before the date of conviction in respect of that offence.

(4) The court may have regard to any such conviction or alternative disposal only if it is—

(a) specified in a notice laid before the court by the prosecutor, and

(b) admitted by the accused or proved by the prosecutor (on evidence adduced then or at another diet).

(5) A reference in this section to a conviction which occurred on or after the date of offence O is a reference to such a conviction by a court in any part of the United Kingdom or in any other member State of the European Union.**]**

Textual Amendments

F94 S. 101A inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 70(1)**, 206(1)

102 Interruption of trial for other proceedings.

(1) When the jury have retired to consider their verdict, and the diet in another criminal cause has been called, then, subject to subsection (3) below, if it appears to the judge presiding at the trial to be appropriate, he may interrupt the proceedings in such other cause—

(a) in order to receive the verdict of the jury in the preceding trial, and thereafter to dispose of the case;

(b) to give a direction to the jury in the preceding trial upon any matter upon which the jury may wish a direction from the judge or to hear any request from the jury regarding any matter in the cause.

(2) Where in any case the diet of which has not been called, the accused intimates to the clerk of court that he is prepared to tender a plea of guilty as libelled or such qualified plea as the Crown is prepared to accept, or where a case is remitted to the High Court for sentence, then, subject to subsection (3) below, any trial then proceeding may be interrupted for the purpose of receiving such plea or dealing with the remitted case and pronouncing sentence or otherwise disposing of any such case.

(3) In no case shall any proceedings in the preceding trial take place in the presence of the jury in the interrupted trial, but in every case that jury shall be directed to retire by the presiding judge.

(4) On the interrupted trial being resumed the diet shall be called *de novo*.

(5) In any case an interruption under this section shall not be deemed an irregularity, nor entitle the accused to take any objection to the proceedings.

VALID FROM 10/12/2007

I[F95 Failure of accused to appear

Textual Amendments

F95 S. 102A inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 32**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S. I. 2007/527)

102A Failure of accused to appear

(1) In proceedings on indictment, an accused person who without reasonable excuse fails to appear at a diet of which the accused has been given due notice (apart from a diet which the accused is not required to attend) is—

(a) guilty of an offence; and

(b) liable on conviction on indictment to a fine or to imprisonment for a period not exceeding 5 years or to both.

(2) In proceedings on indictment, where an accused person fails to appear at a diet of which the accused has been given due notice (apart from a diet which the accused is not required to attend), the court may grant a warrant to apprehend the accused.

(3) It is not, otherwise than under subsection (2) above, competent in any proceedings on indictment for a court to grant a warrant for the apprehension of an accused person for failure to appear at a diet.

(4) However, it remains competent for a court to grant a warrant on petition (as referred to in section 34 of this Act) in respect of an offence under—

(a) subsection (1) above;

(b) section 27(1)(a) of this Act,

whether or not a warrant has been granted under subsection (2) above in respect of the same failure to appear to which that offence relates.

(5) Where a warrant to apprehend an accused person is granted under subsection (2) above, the indictment falls as respects that accused.

(6) Subsection (5) above is subject to any order to different effect made by the court when granting the warrant.

(7) An order under subsection (6) above—

(a) for the purpose of proceeding with the trial in the absence of the accused under section 92(2A) (where the warrant is granted at a trial diet), may be made on the motion of the prosecutor;

(b) for any other purpose, may be made on the motion of the prosecutor or of the court's own accord.

(8) A warrant granted under subsection (2) above shall be in such form as may be prescribed by Act of Adjournal or as nearly as may be in such form.

(9) A warrant granted under subsection (2) above (in the form mentioned in subsection (8) above) shall imply warrant to officers of law—

(a) to search for and apprehend the accused;

(b) to bring the accused before the court;

(c) in the meantime, to detain the accused in a police station, police cell or other convenient place; and

(d) so far as is necessary for the execution of the warrant, to break open shut and lockfast places.

(10) An accused apprehended under a warrant granted under subsection (2) above shall wherever practicable be brought before the court not later than in the course of the first day on which the court is sitting after the accused is taken into custody.

(11) Where the accused is brought before the court in pursuance of a warrant granted under subsection (2) above, the court shall make an order—

(a) detaining the accused until liberated in due course of law; or

(b) releasing the accused on bail.

(12) For the purposes of subsection (11) above, the court is to have regard to the terms of the indictment in relation to which the warrant was granted even if that indictment has fallen.

(13) In a case where a warrant is granted under subsection (2) above, any period of time during which the accused was detained in custody—

(a) as regards that case; and

(b) prior to the making of an order under subsection (11) above,

does not count towards any time limit applying in that case by virtue of section 65(4) of this Act.

(14) For the purposes of subsection (13) above—

(a) detention as regards a case includes, in addition to detention as regards the indictment in relation to which the warrant was granted (whether or not that indictment has fallen), detention as regards any preceding petition;

(b) it is immaterial whether or not further proceedings are on a fresh indictment.

(15) At any time before the trial of an accused person on indictment, it is competent—

(a) to amend the indictment so as to include an additional charge of an offence under subsection (1) above;

(b) to include, in the list of witnesses or productions associated with the indictment, witnesses or productions relating to that offence.

(16) In this section, "the court" means—

(a) where the accused failed to appear at the High Court—

(i) for the purposes of subsections (10) to (12) above, that Court (whether or not constituted by a single judge);

(ii) otherwise, a single judge of that Court;

(b) where the accused failed to appear at a sheriff court, any sheriff court with jurisdiction in relation to the proceedings.**]**

PART VIII

APPEALS FROM SOLEMN PROCEEDINGS

103 Appeal sittings.

(1) The High Court shall hold both during session and during vacation such sittings as are necessary for the disposal of appeals and other proceedings under this Part of this Act.

(2) Subject to subsection (3) below, for the purpose of hearing and determining any appeal or other proceeding under this Part of this Act three of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and the determination of any question under this Part of this Act by the court shall be according to the votes of the majority of the members of the court sitting, including the presiding judge, and each judge so sitting shall be entitled to pronounce a separate opinion.

(3) For the purpose of hearing and determining any appeal under section 106(1)(b) to (e) of this Act, or any proceeding connected therewith, two of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and each judge shall be entitled to pronounce a separate opinion; but where the two Lords Commissioners of Justiciary are unable to reach agreement on the disposal of the appeal, or where they consider it appropriate, the appeal shall be heard and determined in accordance with **[**[F96]subsection (2)**]** above.

(4) Subsections (1) **[**F97to (3)**]** above shall apply to cases certified to the High Court by a single judge of the said court and to appeals by way of advocation in like manner as they apply to appeals under this Part of this Act.

(5) The powers of the High Court under this Part of this Act—

(a) to extend the time within which intimation of intention to appeal and note of appeal may be given;

(b) to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave; and

(c) to admit an appellant to bail,

may be exercised by any judge of the High Court, sitting and acting wherever convenient, in the same manner as they may be exercised by the High Court, and subject to the same provisions.

(6) Where a judge acting under subsection (5) above refuses an application by an appellant to exercise under that subsection any power in his favour, the appellant shall be entitled to have the application determined by the High Court.

(7) Subject to subsection (5) **[**F98and (6)**]** above and without prejudice to it, preliminary and interlocutory proceedings incidental to any appeal or application may be disposed of by a single judge.

(8) In all proceedings before a judge under section (5) above, and in all preliminary and interlocutory proceedings and applications except such as are heard before the full court, the parties may be represented and appear by a solicitor alone.

Textual Amendments

F96 Words in s. 103(3) substituted (1.8.1997) by 1997 c. 48 , s. 62(1) , **Sch. 1 para. 21(13)(a)** ; S.I. 1997/1712 , art. 3 , **Sch.** (subject to arts. 4 , 5)

F97 Words in s. 103(4) substituted (1.8.1997) by 1997 c. 48 , s. 62(1) , **Sch. 1 para. 21(13)(b)** ; S.I. 1997/1712 , art. 3 , **Sch.** (subject to arts. 4 , 5)

F98 Words in s. 103(7) inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(13)(c)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

104 Power of High Court in appeals.

(1) Without prejudice to any existing power of the High Court, it may for the purposes of an appeal under section 106(1) or 108 of this Act—

(a) order the production of any document or other thing connected with the proceedings;

(b) hear any F99. . .evidence relevant to any alleged miscarriage of justice or order such evidence to be heard by a judge of the High Court or by such other person as it may appoint for that purpose;

(c) take account of any circumstances relevant to the case which were not before the trial judge;

(d) remit to any fit person to enquire and report in regard to any matter or circumstance affecting the appeal;

(e) appoint a person with expert knowledge to act as assessor to the High Court in any case where it appears to the court that such expert knowledge is required for the proper determination of the case.

(2) The evidence of any witnesses ordered to be examined before the High Court or before any judge of the High Court or other person appointed by the High Court shall be taken in accordance with the existing law and practice as to the taking of evidence in criminal trials in Scotland.

(3) The appellant or applicant and the respondent or counsel on their behalf shall be entitled to be present at and take part in any examination of any witness to which this section relates.

Textual Amendments

F99 Word in s. 104(1)(b) repealed (1.8.1997) by 1997 c. 48 , s. 62(1)(2) , Sch. 1 para. 21(14) , **Sch. 3** ; S.I. 1997/1712 , art. 3 , **Sch.** (subject to arts. 4 , 5)

105 Appeal against refusal of application.

(1) When an application or applications have been dealt with by a judge of the High Court, under section 103(5) of this Act, the Clerk of Justiciary shall—

(a) notify to the applicant the decision in the form prescribed by Act of Adjournal or as nearly as may be in such form; and

(b) where all or any of such applications have been refused, forward to the applicant the prescribed form for completion and return forthwith if he desires to have the application or applications determined by the High Court as fully constituted for the hearing of appeals under this Part of this Act.

(2) Where the applicant does not desire a determination as mentioned in subsection (1)(b) above, or does not return within five days to the Clerk the form duly completed by him, the refusal of his application or applications by the judge shall be final.

(3) Where an applicant who desires a determination by the High Court as mentioned in subsection (1)(b) above—

(a) is not legally represented, he may be present at the hearing and determination by the High Court of the application;

(b) is legally represented, he shall not be entitled to be present without leave of the court.

(4) When an applicant duly completes and returns to the Clerk of Justiciary within the prescribed time the form expressing a desire to be present at the hearing and determination by the court of the applications mentioned in this section, the form shall be deemed to be an application by the applicant for leave to be so present, and the Clerk of Justiciary, on receiving the form, shall take the necessary steps for placing the application before the court.

(5) If the application to be present is refused by the court, the Clerk of Justiciary shall notify the applicant; and if the application is granted, he shall notify the applicant and the Governor of the prison where the applicant is in custody and the Secretary of State.

(6) For the purpose of constituting a Court of Appeal, the judge who has refused any application may sit as a member of the court, and take part in determining the application.

VALID FROM 27/06/2003

[F100 105A Appeal against granting of application

(1) Where the prosecutor desires a determination by the High Court as mentioned in subsection (6A) of section 103 of this Act, he shall apply to the judge immediately after the power in subsection (5)(c) of that section is exercised in favour of the appellant.

(2) Where a judge acting under section 103(5)(c) of this Act has exercised that power in favour of the appellant but the prosecutor has made an application under subsection (1) above—

(a) the appellant shall not be liberated until the determination by the High Court; and

(b) that application by the prosecutor shall be heard not more than seven days after the making of the application,

and the Clerk of the Justiciary shall forward to the appellant the prescribed form for completion and return forthwith if he desires to be present at the hearing.

(3) At a hearing and determination as mentioned in subsection (2) above, if the appellant—

(a) is not legally represented, he may be present;

(b) is legally represented, he shall not be entitled to be present without leave of the court.

(4) If the appellant completes and returns the form mentioned in subsection (2) above indicating a desire to be present at the hearing, the form shall be deemed to be an application by the appellant for leave to be so present, and the Clerk of Justiciary, on receiving the form, shall take the necessary steps for placing the application before the court.

(5) If the application to be present is refused by the court, the Clerk of Justiciary shall notify the appellant; and if the application is granted, he shall notify the appellant and the Governor of the prison where the applicant is in custody and the Scottish Ministers.

(6) For the purposes of constituting a Court of Appeal, the judge who exercised the power in section 103(5)(c) of this Act in favour of the appellant may sit as a member of the court, and take part in determining the application of the prosecutor.**]**

Textual Amendments

F100 S. 105A inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7) , **ss. 66(4)** , 89 ; S.S.I. 2003/288 , **art. 2** , Sch.

106 Right of appeal.

(1) Any person convicted on indictment may, with leave granted in accordance with section 107 of this Act, appeal in accordance with this Part of this Act, to the High Court—

(a) against such conviction;

(b) subject to subsection (2) below, against the sentence passed on such conviction;

[F101(bb) against any decision not to exercise the power conferred by section 205A(3), 205B(3) or 209(1A) of this Act;**]**

(c) against his absolute discharge or admonition;

(d) against any probation order or any community service order;

[F102(da) against any decision to remit made under section 49(1)(a) of this Act;**]**

(e) against any order deferring sentence; or

(f) against both such conviction and, subject to subsection (2) below, such sentence or disposal or order.

(2) There shall be no appeal against any sentence fixed by law.

[F103(3) By an appeal under subsection (1) above a person may bring under review of the High Court any alleged miscarriage of justice, which may include such a miscarriage based on—

(a) subject to subsections (3A) to (3D) below, the existence and significance of evidence which was not heard at the original proceedings; and

(b) the jury's having returned a verdict which no reasonable jury, properly directed, could have returned.

(3A) Evidence such as is mentioned in subsection (3)(a) above may found an appeal only where there is a reasonable explanation of why it was not so heard.

(3B) Where the explanation referred to in subsection (3A) above or, as the case may be, (3C) below is that the evidence was not admissible at the time of the original proceedings, but is admissible at the time of the appeal, the court may admit that evidence if it appears to the court that it would be in the interests of justice to do so.

(3C) Without prejudice to subsection (3A) above, where evidence such as is mentioned in paragraph (a) of subsection (3) above is evidence—

(a) which is—

(i) from a person; or

(ii) of a statement (within the meaning of section 259(1) of this Act) by a person,

who gave evidence at the original proceedings; and

(b) which is different from, or additional to, the evidence so given,

it may not found an appeal unless there is a reasonable explanation as to why the evidence now sought to be adduced was not given by that person at those proceedings, which explanation is itself supported by independent evidence.

(3D) For the purposes of subsection (3C) above, "independent evidence" means evidence which—

(a) was not heard at the original proceedings;

(b) is from a source independent of the person referred to in subsection (3C) above; and

(c) is accepted by the court as being credible and reliable.**]**

(4) Any document, production or other thing lodged in connection with the proceedings on the trial of any person who, if convicted, is entitled or may be authorised to appeal under this Part of this Act, shall, in accordance with subsections (5) to (9) below, be kept in the custody of the court in which the conviction took place.

(5) All documents and other productions produced at the trial of a convicted person shall be kept in the custody of the court of trial in such manner as it may direct until any period allowed under or by virtue of this Part of this Act for lodging intimation of intention to appeal has elapsed.

(6) Where no direction is given as mentioned in subsection (5) above, such custody shall be in the hands of the sheriff clerk of the district of the court of the second diet to whom the clerk of court shall hand them over at the close of the trial, unless otherwise ordered by the High Court on an intimation of intention to appeal being lodged, and if within such period there has been such lodgement under this Part of this Act, they shall be so kept until the appeal, if it is proceeded with, is determined.

(7) Notwithstanding subsections (5) and (6) above, the judge of the court in which the conviction took place may, on cause shown, grant an order authorising any of such documents or productions to be released on such conditions as to custody and return as he may deem it proper to prescribe.

(8) All such documents or other productions so retained in custody or released and returned shall, under supervision of the custodian thereof, be made available for inspection and for the purpose of making copies of documents or productions to a person who has lodged an intimation of intention to appeal or as the case may be, to the convicted person's counsel or agent, and to the Crown Agent and the procurator fiscal or his deputes.

(9) Where no intimation of intention to appeal is lodged within the period mentioned in subsection (6) above, all such documents and productions shall be dealt with as they are dealt with according to the existing law and practice at the conclusion of a trial; and they shall be so dealt with if, there having been such intimation, the appeal is not proceeded with.

Textual Amendments

F101 S. 106(1)(bb) inserted (20.10.1997) by 1997 c. 48, **s. 18(1)**; S.I. 1997/2323, art. 3, **Sch. 1**

F102 S. 106(1)(da) inserted (1.8.1997) by 1997 c. 48, **s. 23(b)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F103 S. 106(3)-(3D) substituted (1.8.1997) for s. 106(3) by 1997 c. 48, **s. 17(1)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

Modifications etc. (not altering text)

C21 S. 106 amended (1.4.1996) by 1995 c. 43, **ss. 10(5)**, 50(2)

[F104 106A Appeal against automatic sentences where earlier conviction quashed.

(1) This subsection applies where—

(a) a person has been sentenced under section 205A(2) of this Act;

(b) he had, at the time at which the offence for which he was so sentenced was committed, only one previous conviction for a qualifying offence or a relevant offence within the meaning of that section; and

(c) after he has been so sentenced, the conviction mentioned in paragraph (b) above has been quashed.

(2) This subsection applies where—

(a) a person has been sentenced under section 205B(2) of this Act;

(b) he had, at the time at which the offence for which he was so sentenced was committed, only two previous convictions for class A drug trafficking offences within the meaning of that section; and

(c) after he has been so sentenced, one of the convictions mentioned in paragraph (b) above has been quashed.

(3) Where subsection (1) or (2) above applies, the person may appeal under section 106(1)(b) of this Act against the sentence imposed on him under section 205A(2) or, as the case may be, 205B(2) of this Act.

(4) An appeal under section 106(1)(b) of this Act by virtue of subsection (3) above—

(a) may be made notwithstanding that the person has previously appealed under that section; and

(b) shall be lodged within two weeks of the quashing of the conviction as mentioned in subsection (1)(c) or, as the case may be, (2)(c) above.

(5) Where an appeal is made under section 106(1)(b) by virtue of this section, the following provisions of this Act shall not apply in relation to such an appeal, namely—

(a) section 121; and

(b) section 126.**]**

Textual Amendments

F104 S. 106A inserted (20.10.1997 for specified purposes and otherwise prosp.) by 1997 c. 48 , **ss. 19(1)** , 65(2) ; S.I. 1997/2323 , art. 3 , **Sch. 1**

107 Leave to appeal.

(1) The decision whether to grant leave to appeal for the purposes of section 106(1) of this Act shall be made by a judge of the High Court who shall—

(a) if he considers that the documents mentioned in subsection (2) below disclose arguable grounds of appeal, grant leave to appeal and make such comments in writing as he considers appropriate; and

(b) in any other case—

(i) refuse leave to appeal and give reasons in writing for the refusal; and

(ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

(2) The documents referred to in subsection (1) above are—

(a) the note of appeal lodged under section 110(1)(a) of this Act;

(b) in the case of an appeal against conviction or sentence in a sheriff court, the certified copy or, as the case may be, the record of the proceedings at the trial;

(c) where the judge who presided at the trial furnishes a report under section 113 of this Act, that report; and

(d) where, by virtue of section 94(1) of this Act, a transcript of the charge to the jury of the judge who presided at the trial is delivered to the Clerk of Justiciary, that transcript.

(3) A warrant granted under subsection (1)(b)(ii) above shall not take effect until the expiry of the period of 14 days mentioned in subsection (4) below without an application to the High Court for leave to appeal having been lodged by the appellant under that subsection.

(4) Where leave to appeal is refused under subsection (1) above the appellant may, within 14 days of intimation under **[**[F105]subsection (10)**]** below, apply to the High Court for leave to appeal.

(5) In deciding an application under subsection (4) above the High Court shall—

(a) if, after considering the documents mentioned in subsection (2) above and the reasons for the refusal, the court is of the opinion that there are arguable grounds of appeal, grant leave to appeal and make such comments in writing as the court considers appropriate; and

(b) in any other case—

(i) refuse leave to appeal and give reasons in writing for the refusal; and

(ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

(6) Consideration whether to grant leave to appeal under subsection (1) or (5) above shall take place in chambers without the parties being present.

(7) Comments in writing made under subsection (1)(a) or (5)(a) above may, without prejudice to the generality of that provision, specify the arguable grounds of appeal (whether or not they are contained in the note of appeal) on the basis of which leave to appeal is granted.

(8) Where the arguable grounds of appeal are specified by virtue of subsection (7) above it shall not, except by leave of the High Court on cause shown, be competent for the appellant to found any aspect of his appeal on any ground of appeal contained in the note of appeal but not so specified.

(9) Any application by the appellant for the leave of the High Court under subsection (8) above—

(a) shall be made not less than seven days before the date fixed for the hearing of the appeal; and

(b) shall, not less that seven days before that date, be intimated by the appellant to the Crown Agent.

(10) The Clerk of Justiciary shall forthwith intimate—

(a) a decision under subsection (1) or (5) above; and

(b) in the case of a refusal of leave to appeal, the reasons for the decision,

to the appellant or his solicitor and to the Crown Agent.

Textual Amendments

F105 Words in s. 107(4) substituted (1.8.1997) by 1997 c. 48 , s. 62(1) , **Sch. 1 para. 21(15)** ; S.I. 1997/1712 , art. 3 , **Sch.** (subject to arts. 4 , 5)

Modifications etc. (not altering text)

C22 S. 107 applied (with modifications) (26.8.2002) by Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513) , rule 15 .15(4) (as inserted (26.8.2002) by Act of Adjournal (Criminal Appeals) 2002 (S.S.I. 2002/387) , **para. 3(4)**)

VALID FROM 28/03/2011

[F106 107A Prosecutor's right of appeal: decisions on section 97 and 97A submissions

(1) The prosecutor may appeal to the High Court against—

(a) an acquittal under section 97 or 97B(2)(a), or

(b) a direction under section 97B(2)(b) or 97C(2).

(2) If, immediately after an acquittal under section 97 or 97B(2)(a), the prosecutor moves for the trial diet to be adjourned for no more than 2 days in order to consider whether to appeal against the acquittal under subsection (1), the court of first instance must grant the motion unless the court considers that there are no arguable grounds of appeal.

(3) If, immediately after the giving of a direction under section 97B(2)(b) or 97C(2), the prosecutor moves for the trial diet to be adjourned for no more than 2 days in order to consider whether to appeal against the direction under subsection (1), the court of first instance must grant the motion unless the court considers that it would not be in the interests of justice to do so.

(4) In considering whether it would be in the interests of justice to grant a motion for adjournment under subsection (3), the court must have regard, amongst other things, to—

(a) whether, if an appeal were to be made and to be successful, continuing with the diet would have any impact on any subsequent or continued prosecution,

(b) whether there are any arguable grounds of appeal.

(5) An appeal may not be brought under subsection (1) unless the prosecutor intimates intention to appeal—

(a) immediately after the acquittal or, as the case may be, the giving of the direction,

(b) if a motion to adjourn the trial diet under subsection (2) or (3) is granted, immediately upon resumption of the diet, or

(c) if such a motion is refused, immediately after the refusal.

(6) Subsection (7) applies if—

(a) the prosecutor intimates an intention to appeal under subsection (1)(a), or

(b) the trial diet is adjourned under subsection (2).

(7) Where this subsection applies, the court of first instance must suspend the effect of the acquittal and may—

(a) make an order under section 4(2) of the Contempt of Court Act 1981 (c.49) (which gives a court power, in some circumstances, to order that publication of certain reports be postponed) as if proceedings for the offence of which the person was acquitted were pending or imminent,

(b) after giving the parties an opportunity of being heard, order the detention of the person in custody or admit him to bail.

(8) The court may, under subsection (7)(b), order the detention of the person in custody only if the court considers that there are arguable grounds of appeal.

Textual Amendments

F106 Ss. 107A-107F inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 74**, 206(1)

VALID FROM 28/03/2011

107B Prosecutor's right of appeal: decisions on admissibility of evidence

(1) The prosecutor may appeal to the High Court against a finding, made after the jury is empanelled and before the close of the evidence for the prosecution, that evidence that the prosecution seeks to lead is inadmissible.

(2) The appeal may be made only with the leave of the court of first instance, granted—

(a) on the motion of the prosecutor, or

(b) on that court's initiative.

(3) Any motion for leave to appeal must be made before the close of the case for the prosecution.

(4) In determining whether to grant leave to appeal the court must consider—

(a) whether there are arguable grounds of appeal, and

(b) what effect the finding has on the strength of the prosecutor's case.

Textual Amendments

F106 Ss. 107A-107F inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 74**, 206(1)

VALID FROM 28/03/2011

107C Appeals under section 107A and 107B: general provisions

(1) In an appeal brought under section 107A or 107B the High Court may review not only the acquittal, direction or finding appealed against but also any direction, finding, decision, determination or ruling in the proceedings at first instance if it has a bearing on the acquittal, direction or finding appealed against.

(2) The test to be applied by the High Court in reviewing the acquittal, direction or finding appealed against is whether it was wrong in law.

Textual Amendments

F106 Ss. 107A-107F inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 74**, 206(1)

VALID FROM 28/03/2011

107D Expedited appeals

(1) Subsection (2) applies where—

(a) the prosecutor intimates intention to appeal under section 107A or leave to appeal is granted by the court under section 107B, and

(b) the court is able to obtain confirmation from the Keeper of the Rolls that it would be practicable for the appeal to be heard and determined during an adjournment of the trial diet.

(2) The court must inform both parties of that fact and, after hearing them, must decide whether or not the appeal is to be heard and determined during such an adjournment.

(3) An appeal brought under section 107A or 107B which is heard and determined during such an adjournment is referred to in this Act as an "expedited appeal".

(4) If the court decides that the appeal is to be an expedited appeal the court must, pending the outcome of the appeal—

(a) adjourn the trial diet, and

(b) where the appeal is against an acquittal, suspend the effect of the acquittal.

(5) Where the court cannot obtain from the Keeper of the Rolls confirmation of the kind mentioned in subsection (1)(b), the court must inform the parties of that fact.

(6) Where the High Court in an expedited appeal determines that an acquittal of an offence libelled in the indictment was wrong in law it must quash the acquittal and direct that the trial is to proceed in respect of the offence.

Textual Amendments

F106 Ss. 107A-107F inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 74**, 206(1)

VALID FROM 28/03/2011

107E Other appeals under section 107A: appeal against acquittal

(1) This section applies where—

(a) an appeal brought under section 107A is not an expedited appeal,

(b) the appeal is against an acquittal, and

(c) the High Court determines that the acquittal was wrong in law.

(2) The court must quash the acquittal.

(3) If the prosecutor seeks leave to bring a new prosecution charging the accused with the same offence as that libelled in the indictment, or a similar offence arising out of the same facts as the offence libelled in the indictment, the High Court must grant the prosecutor authority to do so in accordance with section 119, unless the court considers that it would be contrary to the interests of justice to do so.

(4) If—

(a) no motion is made under subsection (3), or

(b) the High Court does not grant a motion made under that subsection,

the High Court must in disposing of the appeal acquit the accused of the offence libelled in the indictment.

Textual Amendments

F106 Ss. 107A-107F inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 74**, 206(1)

VALID FROM 28/03/2011

107F Other appeals under section 107A or 107B: appeal against directions etc.

(1) This section applies where—

(a) an appeal brought under section 107A or 107B is not an expedited appeal, and

(b) the appeal is not against an acquittal.

(2) The court of first instance must desert the diet *pro loco et tempore* in relation to any offence to which the appeal relates.

(3) The trial is to proceed only if another offence of which the accused has not been acquitted and to which the appeal does not relate is libelled in the indictment.

(4) However, if the prosecutor moves for the diet to be deserted *pro loco et tempore* in relation to such other offence, the court must grant the motion.

(5) If the prosecutor seeks leave to bring a new prosecution charging the accused with the same offence as that libelled in the indictment, or a similar offence arising out of the same facts as the offence libelled in the indictment, the High Court must grant the prosecutor authority to do so in accordance with section 119, unless the court considers that it would be contrary to the interests of justice to do so.**]**

Textual Amendments

F106 Ss. 107A-107F inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 74**, 206(1)

[F107 108 Lord Advocate's right of appeal against disposal.

(1) Where a person has been convicted on indictment, the Lord Advocate may, in accordance with subsection (2) below, appeal against any of the following disposals, namely—

(a) a sentence passed on conviction;

(b) a decision under section 209(1)(b) of this Act not to make a supervised release order;

(c) a decision under section 234A(2) of this Act not to make a non-harassment order;

(d) a probation order;

(e) a community service order;

(f) a decision to remit to the Principal Reporter made under section 49(1)(a) of this Act;

(g) an order deferring sentence;

(h) an admonition; or

(i) an absolute discharge.

(2) An appeal under subsection (1) above may be made—

(a) on a point of law;

(b) where it appears to the Lord Advocate, in relation to an appeal under—

(i) paragraph (a), (h) or (i) of that subsection, that the disposal was unduly lenient;

(ii) paragraph (b) or (c) of that subsection, that the decision not to make the order in question was inappropriate;

(iii) paragraph (d) or (e) of that subsection, that the making of the order concerned was unduly lenient or was on unduly lenient terms;

(iv) under paragraph (f) of that subsection, that the decision to remit was inappropriate;

(v) under paragraph (g) of that subsection, that the deferment of sentence was inappropriate or was on unduly lenient conditions.**]**

Textual Amendments

F107 S. 108 substituted (1.8.1997) by 1997 c. 48, **s. 21(1)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

[F108 108A Lord Advocate's appeal against decision not to impose automatic sentence in certain cases.

Where the court has exercised the power conferred by section 205A(3), 205B(3) or 209(1A) of this Act, the Lord Advocate may appeal against that decision.**]**

Textual Amendments

F108 S. 108A inserted (20.10.1997 for specified purposes and otherwise*prosp.*) by 1997 c. 48, **s. 18(2)**; S.I. 1997/2323, art. 3, **Sch. 1**

109 Intimation of intention to appeal.

(1) Subject to section 111(2) of this Act and to section 10 of the [M45]Proceeds of Crime (Scotland) Act 1995 (postponed confiscation orders), where a person desires to appeal under section 106(1)(a) or (f) of this Act, he shall within two weeks of the final determination of the proceedings, lodge with the Clerk of Justiciary written intimation of intention to appeal which shall identify the proceedings and be in as nearly as may be the form prescribed by Act of Adjournal.

(2) A copy of intimation given under subsection (1) above shall be sent to the Crown Agent.

(3) On intimation under subsection (1) above being lodged by a person in custody, the Clerk of Justiciary shall give notice of the intimation to the Secretary of State.

(4) Subject to subsection (5) below, for the purposes of subsection (1) above and section 106(5) to (7) of this Act, proceedings shall be deemed finally determined on the day on which sentence is passed in open court.

(5) Where in relation to an appeal under section 106(1)(a) of this Act sentence is deferred under section 202 of this Act, the proceedings shall be deemed finally determined on the day on which sentence is first so deferred in open court.

(6) Without prejudice to section 10 of the said Act of 1995, the reference in subsection (4) above to "the day on which sentence is passed in open court" shall, in relation to any case in which, under subsection (1) of that section, a decision has been postponed for a period, be construed as a reference to the day on which that decision is made, whether or not a confiscation order is then made or any other sentence is then passed.

Modifications etc. (not altering text)
C23 S. 109(1) restricted (1.4.1996) by 1995 c. 43 , **ss. 10(4)** , 50(2)

Marginal Citations
M45 1995 c.43.

110 Note of appeal.

(1) Subject to section 111(2) of this Act—

(a) within six weeks of lodging intimation of intention to appeal or, in the case of an appeal under section 106(1)(b) to (e) of this Act, within two weeks of the **[**[F109]appropriate date (being, as the case may be, the date on which sentence was passed, the order disposing of the case was made, sentence was deferred or the previous conviction was quashed as mentioned in section 106A(1)(c) or (2)(c) of this Act)**]** in open court, the convicted person may lodge a written note of appeal with the Clerk of Justiciary who shall send a copy to the judge who presided at the trial and to the Crown Agent; or, as the case may be,

(b) within four weeks of the passing of the sentence in open court, the Lord Advocate may lodge such a note with the Clerk of Justiciary, who shall send a copy to the said judge and to the convicted person or that person's solicitor.

(2) The period of six weeks mentioned in paragraph (a) of subsection (1) above may be extended, before it expires, by the Clerk of Justiciary.

(3) A note of appeal shall—

(a) identify the proceedings;

(b) contain a full statement of all the grounds of appeal; and

(c) be in as nearly as may be the form prescribed by Act of Adjournal.

(4) Except by leave of the High Court on cause shown, it shall not be competent for an appellant to found any aspect of his appeal on a ground not contained in the note of appeal.

(5) Subsection (4) above shall not apply as respects any ground of appeal specified as an arguable ground of appeal by virtue of subsection (7) of section 107 of this Act.

(6) On a note of appeal under section 106(1)(b) to (e) of this Act being lodged by an appellant in custody the Clerk of Justiciary shall give notice of that fact to the Secretary of State.

Textual Amendments

F109 Words in s. 110(1) substituted (20.10.1997) by 1997 c. 48 , **s. 19(2)** ; S.I. 1997/2323 , art. 3 , **Sch. 1**

111 Provisions supplementary to sections 109 and 110.

(1) Where the last day of any period mentioned in sections 109(1) and 110(1) of this Act falls on a day on which the office of the Clerk of Justiciary is closed, such period shall extend to and include the next day on which such office is open.

(2) Any period mentioned in section 109(1) or 110(1)(a) of this Act may be extended at any time by the High Court in respect of any convicted person; and an application for such extension may be made under this subsection and shall be in as nearly as may be the form prescribed by Act of Adjournal.

112 Admission of appellant to bail.

(1) Subject to subsection (2) below, the High Court may, if it thinks fit, on the application of a convicted person, admit him to bail pending the determination of—

(a) his appeal; or

(b) any relevant appeal by the Lord Advocate under section 108 **[**F110or 108A**]** of this Act.

(2) The High Court shall not admit a convicted person to bail under subsection (1) above unless—

(a) where he is the appellant and has not lodged a note of appeal in accordance with section 110(1)(a) of this Act, the application for bail states reasons why it should be granted and sets out the proposed grounds of appeal; or

(b) where the Lord Advocate is the appellant, the application for bail states reasons why it should be granted,

and, in either case, the High Court considers there to be exceptional circumstances justifying admitting the convicted person to bail.

(3) A person who is admitted to bail under subsection (1) above shall, unless the High Court otherwise directs, appear personally in court on the day or days fixed for the hearing of the appeal.

(4) Where an appellant fails to appear personally in court as mentioned in subsection (3) above, the court may—

(a) if he is the appellant—

(i) decline to consider the appeal; and

(ii) dismiss it summarily; or

(b) whether or not he is the appellant—

(i) consider and determine the appeal; or

(ii) without prejudice to section 27 of this Act, make such other order as the court thinks fit.

(5) For the purposes of subsections (1), (3) and (4) above, "appellant" includes not only a person who has lodged a note of appeal but also one who has lodged an intimation of intention to appeal.

Textual Amendments

F110 Words in s. 112(1) inserted (20.10.1997) by 1997 c. 48, **s. 18(3)**; S.I. 1997/2323, art. 3, **Sch. 1**

113 Judge's report.

(1) As soon as is reasonably practicable after receiving the copy note of appeal sent to him under section 110(1) of this Act, the judge who presided at the trial shall furnish the Clerk of Justiciary with a written report giving the judge's opinion on the case generally and on the grounds contained in the note of appeal.

(2) The Clerk of Justiciary shall send a copy of the judge's report—

(a) to the convicted person or his solicitor;

(b) to the Crown Agent; and

(c) in a case referred under section 124(3) of this Act, to the Secretary of State.

(3) Where the judge's report is not furnished as mentioned in subsection (1) above, the High Court may call for the report to be furnished within such period as it may specify or, if it thinks fit, hear and determine the appeal without the report.

(4) Subject to subsection (2) above, the report of the judge shall be available only to the High Court, the parties and, on such conditions as may be prescribed by Act of Adjournal, such other persons or classes of persons as may be so prescribed.

VALID FROM 28/03/2011

[F111 113A Judge's observations in expedited appeal

(1) On receiving a note of appeal given under section 110(1)(e), the judge who presided at the trial may give the Clerk of Justiciary any written observations that the judge thinks fit on—

(a) the case generally,

(b) the grounds contained in the note of appeal.

(2) The High Court may hear and determine the appeal without any such written observations.

(3) If written observations are given under subsection (1), the Clerk of Justiciary must give a copy of them to—

(a) the accused or the accused's solicitor, and

(b) the prosecutor.

(4) The written observations of the judge are available only to—

(a) the High Court,

(b) the parties, and

(c) any other person or classes of person prescribed by Act of Adjournal, in accordance with any conditions prescribed by Act of Adjournal.**]**

Textual Amendments

F111 S. 113A inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 76(3)**, 206(1)

114 Applications made orally or in writing.

Subject to any provision of this Part of this Act to the contrary, any application to the High Court may be made by the appellant or respondent as the case may be or by counsel on his behalf, orally or in writing.

115 Presentation of appeal in writing.

(1) If an appellant, other than the Lord Advocate, desires to present his case and his argument in writing instead of orally he shall, at least four days before the diet fixed for the hearing of the appeal—

(a) intimate this desire to the Clerk of Justiciary;

(b) lodge with the Clerk of Justiciary three copies of his case and argument; and

(c) send a copy of the intimation, case and argument to the Crown Agent.

(2) Any case or argument presented as mentioned in subsection (1) above shall be considered by the High Court.

(3) Unless the High Court otherwise directs, the respondent shall not make a written reply to a case and argument presented as mentioned in subsection (1) above, but shall reply orally at the diet fixed for the hearing of the appeal.

(4) Unless the High Court otherwise allows, an appellant who has presented his case and argument in writing shall not be entitled to submit in addition an oral argument to the court in support of the appeal.

116 Abandonment of appeal.

(1) An appellant may abandon his appeal by lodging with the Clerk of Justiciary a notice of abandonment in as nearly as may be the form prescribed by Act of Adjournal; and on such notice being lodged the appeal shall be deemed to have been dismissed by the court.

(2) A person who has appealed against both conviction and sentence (or, as the case may be, against **[**F112both conviction and a decision such as is mentioned in section 106(1)

(bb) or**]** both conviction and disposal or order) may abandon the appeal in so far as it is against conviction and may proceed with it against sentence (**[**[F113]or, as the case may be, decision, disposal**]** or order) alone.

Textual Amendments

F112 Words in s. 116(2) inserted (20.10.1997) by 1997 c. 48, **s. 18(4)(a)**; S.I. 1997/2323, art. 3, **Sch. 1**

F113 Words in s. 116(2) substituted (20.10.1997) by 1997 c. 48, **s. 18(4)(b)**; S.I. 1997/2323, art. 3, **Sch. 1**

117 Presence of appellant or applicant at hearing.

(1) Where an appellant or applicant is in custody the Clerk of Justiciary shall notify—

(a) the appellant or applicant;

(b) the Governor of the prison in which the appellant or applicant then is; and

(c) the Secretary of State,

of the probable day on which the appeal or application will be heard.

(2) The Secretary of State shall take steps to transfer the appellant or applicant to a prison convenient for his appearance before the High Court at such reasonable time before the hearing as shall enable him to consult his legal adviser, if any.

(3) A convicted appellant, notwithstanding that he is in custody, shall be entitled to be present if he desires it, at the hearing of his appeal.

(4) When an appellant or applicant is to be present at any diet—

(a) before the High Court or any judge of that court; or

(b) for the taking of additional evidence before a person appointed for that purpose under section 104(1)(b) of this Act, or

(c) for an examination or investigation by a special commissioner in terms of section 104(1)(d) of this Act,

the Clerk of Justiciary shall give timeous notice to the Secretary of State, in the form prescribed by Act of Adjournal or as nearly as may be in such form.

(5) A notice under subsection (4) above shall be sufficient warrant to the Secretary of State for transmitting the appellant or applicant in custody from prison to the place where the diet mentioned in that subsection or any subsequent diet is to be held and for reconveying him to prison at the conclusion of such diet.

(6) The appellant or applicant shall appear at any diet mentioned in subsection (4) above in ordinary civilian clothes.

(7) Where the Lord Advocate is the appellant, subsections (1) to (6) above shall apply in respect of the convicted person, if in custody, as they apply to an appellant or applicant in custody.

(8) The Secretary of State shall, on notice under subsection (4) above from the Clerk of Justiciary, ensure that sufficient male and female prison officers attend each sitting of the court, having regard to the list of appeals for the sitting.

(9) When the High Court fixes the date for the hearing of an appeal, or of an application under section 111(2) of this Act, the Clerk of Justiciary shall give notice to the Crown Agent and to the solicitor of the convicted person, or to the convicted person himself if he has no known solicitor.

118 Disposal of appeals.

(1) The High Court may, subject to subsection (4) below, dispose of an appeal against conviction by—

(a) affirming the verdict of the trial court;

(b) setting aside the verdict of the trial court and either quashing the conviction or, subject to subsection (2) below, substituting therefor an amended verdict of guilty; or

(c) setting aside the verdict of the trial court and quashing the conviction and granting authority to bring a new prosecution in accordance with section 119 of this Act.

(2) An amended verdict of guilty substituted under subsection (1) above must be one which could have been returned on the indictment before the trial court.

(3) In setting aside, under subsection (1) above, a verdict the High Court may quash any sentence imposed on the appellant (or, as the case may be, any disposal or order made) as respects the indictment, and—

(a) in a case where it substitutes an amended verdict of guilty, whether or not the sentence (or disposal or order) related to the verdict set aside; or

(b) in any other case, where the sentence (or disposal or order) did not so relate,

may pass another (but not more severe) sentence or make another (but not more severe) disposal or order in substitution for the sentence, disposal or order so quashed.

(4) The High Court may, subject to subsection (5) below, dispose of an appeal against sentence by—

(a) affirming such sentence; or

(b) if the Court thinks that, having regard to all the circumstances, including any [F114]. . . evidence such as is mentioned in section 106(3) of this Act, a different sentence should have been passed, quashing the sentence and passing another sentence whether more or less severe in substitution therefor,

and, in this subsection, "appeal against sentence" shall, without prejudice to the generality of the expression, be construed as including an appeal under **[**[F115]section 106(1)(bb)**]** to (e), and any appeal under section 108, of this Act; and other references to sentence shall be construed accordingly.

[[F116](4A) On an appeal under section 108A of this Act, the High Court may dispose of the appeal—

(a) by affirming the decision and any sentence or order passed;

(b) where it is of the opinion mentioned in section 205A(3) or, as the case may be, 205B(3) of this Act but it considers that a different sentence or order should have been passed, by affirming the decision but quashing any sentence or order passed and passing another sentence or order whether more or less severe in substitution therefor; or

(c) in any other case, by setting aside the decision appealed against and any sentence or order passed by the trial court and where the decision appealed against was taken under—

(i) subsection (3) of section 205A of this Act, by passing the sentence mentioned in subsection (2) of that section;

(ii) subsection (3) of section 205B of this Act, by passing a sentence of imprisonment of at least the length mentioned in subsection (2) of that section; or

(iii) subsection (1A) of section 209 of this Act, by making a supervised release order as required by paragraph (a) of subsection (1) of that section.**]**

(5) In relation to any appeal under section 106(1) of this Act, the High Court shall, where it appears to it that the appellant committed the act charged against him but that he was insane when he did so, dispose of the appeal by—

(a) setting aside the verdict of the trial court and substituting therefor a verdict of acquittal on the ground of insanity; and

(b) quashing any sentence imposed on the appellant (or disposal or order made) as respects the indictment and—

(i) making, in respect of the appellant, any order mentioned in section 57(2)(a) to (d) of this Act; or

(ii) making no order.

(6) Subsections (3) and (4) of section 57 of this Act shall apply to an order made under subsection (5)(b)(i) above as they apply to an order made under subsection (2) of that section.

(7) In disposing of an appeal under section 106(1)(b) to (f) or 108 of this Act the High Court may, without prejudice to any other power in that regard, pronounce an opinion on the sentence or other disposal or order which is appropriate in any similar case.

(8) No conviction, sentence, judgment, order of court or other proceeding whatsoever in or for the purposes of solemn proceedings under this Act—

(a) shall be quashed for want of form; or

(b) where the accused had legal assistance in his defence, shall be suspended or set aside in respect of any objections to—

(i) the relevancy of the indictment, or the want of specification therein; or

(ii) the competency or admission or rejection of evidence at the trial in the inferior court,

unless such objections were timeously stated.

[F117(9) The High Court may give its reasons for the disposal of any appeal in writing without giving those reasons orally.**]**

Textual Amendments

F114 S. 118(4)(b) repealed (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(17)(a)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F115 Words in s. 118(4) substituted (20.10.1997) by 1997 c. 48, **s. 18(5)(a)**; S.I. 1997/2323, art. 3, **Sch. 1**

F116 S. 118(4A) inserted (20.10.1997 for specified purposes and otherwise*prosp.*) by 1997 c. 48, **s. 18(5)(b)**; S.I. 1997/2323, art. 3, **Sch. 1**

F117 S. 118(9) inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(17)(b)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

119 Provision where High Court authorises new prosecution.

(1) Subject to subsection (2) below, where authority is granted under section 118(1)(c) of this Act, a new prosecution may be brought charging the accused with the same or any similar offence arising out of the same facts; and the proceedings out of which the appeal arose shall not be a bar to such new prosecution.

(2) In a new prosecution under this section the accused shall not be charged with an offence more serious than that of which he was convicted in the earlier proceedings.

(3) No sentence may be passed on conviction under the new prosecution which could not have been passed on conviction under the earlier proceedings.

(4) A new prosecution may be brought under this section, notwithstanding that any time limit, other than the time limit mentioned in subsection (5) below, for the commencement of such proceedings has elapsed.

(5) Proceedings in a prosecution under this section shall be commenced within two months of the date on which authority to bring the prosecution was granted.

(6) In proceedings in a new prosecution under this section it shall, subject to subsection (7) below, be competent for either party to lead any evidence which it was competent for him to lead in the earlier proceedings.

(7) The indictment in a new prosecution under this section shall identify any matters as respects which the prosecutor intends to lead evidence by virtue of subsection (6) above which would not have been competent but for that subsection.

(8) For the purposes of subsection (5) above, proceedings shall be deemed to be commenced—

(a) in a case where a warrant to apprehend or to cite the accused is executed without unreasonable delay, on the date on which the warrant is granted; and

(b) in any other case, on the date on which the warrant is executed.

(9) Where the two months mentioned in subsection (5) above elapse and no new prosecution has been brought under this section, the order under section 118(1)(c) of this Act setting aside the verdict shall have the effect, for all purposes, of an acquittal.

(10) On granting authority under section 118(1)(c) of this Act to bring a new prosecution, the High Court shall, after giving the parties an opportunity of being heard, order the detention of the accused person in custody or admit him to bail.

(11) Subsections (4)(b) and (7) to (9) of section 65 of this Act (prevention of delay in trials) shall apply to an accused person who is detained under subsection (10) above as they apply to an accused person detained by virtue of being committed until liberated in due course of law.

120 Appeals: supplementary provisions.

(1) Where—

(a) intimation of the diet appointed for the hearing of the appeal has been made to the appellant;

(b) no appearance is made by or on behalf of an appellant at the diet; and

(c) no case or argument in writing has been timeously lodged,

the High Court shall dispose of the appeal as if it had been abandoned.

(2) The power of the High Court to pass any sentence under this Part of this Act may be exercised notwithstanding that the appellant (or, where the Lord Advocate is the appellant, the convicted person) is for any reason not present.

(3) When the High Court has heard and dealt with any application under this Part of this Act, the Clerk of Justiciary shall (unless it appears to him unnecessary so to do) give

to the applicant if he is in custody and has not been present at the hearing of such application notice of the decision of the court in relation to the said application.

(4) On the final determination of any appeal under this Part of this Act or of any matter under section 103(5) of this Act, the Clerk of Justiciary shall give notice of such determination—

(a) to the appellant or applicant if he is in custody and has not been present at such final determination;

(b) to the clerk of the court in which the conviction took place; and

(c) to the Secretary of State.

121 Suspension of disqualification, forfeiture, etc.

(1) Any disqualification, forfeiture or disability which attaches to a person by reason of a conviction shall not attach—

(a) for the period of four weeks from the date of the verdict against him; or

(b) where an intimation of intention to appeal or, in the case of an appeal under section 106(1)(b) to (e) **[**F118, 108 or 108A**]** of this Act, a note of appeal is lodged, until the appeal, if it is proceeded with, is determined.

(2) The destruction or forfeiture or any order for the destruction or forfeiture of any property, matter or thing which is the subject of or connected with any prosecution following upon a conviction shall be suspended—

(a) for the period of four weeks after the date of the verdict in the trial; or

(b) where an intimation of intention to appeal or, in the case of an appeal under section 106(1)(b) to (e) **[**F119, 108 or 108A**]** of this Act, a note of appeal is lodged, until the appeal, if it is proceeded with, is determined.

(3) This section does not apply in the case of any disqualification, destruction or forfeiture or order for destruction or forfeiture under or by virtue of any enactment which makes express provision for the suspension of the disqualification, destruction or forfeiture or order for destruction or forfeiture pending the determination of an appeal against conviction or sentence.

(4) Where, upon conviction, a fine has been imposed on a person or a compensation order has been made against him under section 249 of this Act, then, for a period of four weeks from the date of the verdict against such person or, in the event of an intimation of intention to appeal (or in the case of an appeal under section 106(1)(b) to (e) **[**F120, 108 or 108A**]** of this Act a note of appeal) being lodged under this Part of this Act, until such appeal, if it is proceeded with, is determined—

(a) the fine or compensation order shall not be enforced against that person and he shall not be liable to make any payment in respect of the fine or compensation order; and

(b) any money paid by that person under the compensation order shall not be paid by the clerk of court to the person entitled to it under subsection (9) of the said section 249.

Textual Amendments

F118 Words in s. 121(1)(b) substituted (20.10.1997) by 1997 c. 48, **s. 18(6)(a)**; S.I. 1997/2323, art. 3, **Sch. 1**

F119 Words in s. 121(2)(b) substituted (20.10.1997) by 1997 c. 48, **s. 18(6)(b)**; S.I. 1997/2323, art. 3, **Sch. 1**

F120 Words in s. 121(4) substituted (20.10.1997) by 1997 c. 48, **s. 18(6)(c)**; S.I. 1997/2323, art. 3, **Sch. 1**

[F121 121A Suspension of certain sentences pending determination of appeal.

(1) Where an intimation of intention to appeal or, in the case of an appeal under section 106(1)(b) to (e), 108 or 108A of this Act, a note of appeal is lodged, the court may on the application of the appellant direct that the whole, or any remaining part, of a relevant sentence shall be suspended until the appeal, if it is proceeded with, is determined.

(2) Where the court has directed the suspension of the whole or any remaining part of a person's relevant sentence, the person shall, unless the High Court otherwise directs, appear personally in court on the day or days fixed for the hearing of the appeal.

(3) Where a person fails to appear personally in court as mentioned in subsection (2) above, the court may—

(a) if he is the appellant—

(i) decline to consider the appeal; and

(ii) dismiss it summarily; or

(b) whether or not he is the appellant—

(i) consider and determine the appeal; or

(ii) make such other order as the court thinks fit.

(4) In this section "relevant sentence" means any one or more of the following—

(a) a probation order;

(b) a supervised attendance order made under section 236(6) of this Act;

(c) a community service order;

(d) a restriction of liberty order.**]**

Textual Amendments

F121 S. 121A inserted (1.8.1997 for specified purposes otherwise and 1.7.1998) by 1997 c. 48, **s. 24(1)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5); S.I. 1997/2323, **art. 5(1)**

122 Fines and caution.

(1) Where a person has on conviction been sentenced to payment of a fine and in default of payment to imprisonment, the person lawfully authorised to receive the fine shall, on receiving it, retain it until the determination of any appeal in relation to the conviction or sentence.

(2) If a person sentenced to payment of a fine remains in custody in default of payment of the fine he shall be deemed, for the purposes of this Part of this Act, to be a person sentenced to imprisonment.

(3) An appellant who has been sentenced to the payment of a fine, and has paid it in accordance with the sentence, shall, in the event of his appeal being successful, be entitled, subject to any order of the High Court, to the return of the sum paid or any part of it.

(4) A convicted person who has been sentenced to the payment of a fine and has duly paid it shall, if an appeal against sentence by the Lord Advocate results in the sentence being quashed and no fine, or a lesser fine than that paid, being imposed, be entitled,

subject to any order of the High Court, to the return of the sum paid or as the case may be to the return of the amount by which that sum exceeds the amount of the lesser fine.

123 Lord Advocate's reference.

(1) Where a person tried on indictment is acquitted or convicted of a charge, the Lord Advocate may refer a point of law which has arisen in relation to that charge to the High Court for their opinion; and the Clerk of Justiciary shall send to the person and to any solicitor who acted for the person at the trial, a copy of the reference and intimation of the date fixed by the Court for a hearing.

(2) The person may, not later than seven days before the date so fixed, intimate in writing to the Clerk of Justiciary and to the Lord Advocate either—

(a) that he elects to appear personally at the hearing; or

(b) that he elects to be represented thereat by counsel,

but, except by leave of the Court on cause shown, and without prejudice to his right to attend, he shall not appear or be represented at the hearing other than by and in conformity with an election under this subsection.

(3) Where there is no intimation under subsection (2)(b) above, the High Court shall appoint counsel to act at the hearing as *amicus curiae*.

(4) The costs of representation elected under subsection (2)(b) above or of an appointment under subsection (3) above shall, after being taxed by the Auditor of the Court of Session, be paid by the Lord Advocate.

(5) The opinion on the point referred under subsection (1) above shall not affect the acquittal or, as the case may be, conviction in the trial.

124 Finality of proceedings and Secretary of State's reference.

(1) Nothing in this Part of this Act shall affect the prerogative of mercy.

(2) Subject to subsection (3) below, every interlocutor and sentence pronounced by the High Court under this Part of this Act shall be final and conclusive and not subject to review by any court whatsoever and it shall be incompetent to stay or suspend any execution or diligence issuing from the High Court under this Part of this Act.

(3) The Secretary of State on the consideration of any conviction of a person or the sentence (other than sentence of death) passed on a person who has been convicted, may, if he thinks fit, at any time, and whether or not an appeal against such conviction or sentence has previously been heard and determined by the High Court, refer the whole case to the High Court and the case shall be heard and determined, subject to any directions the High Court may make, as if it were an appeal under this Part of this Act.

(4) The power of the Secretary of State under this section to refer to the High Court the case of a person convicted shall be exercisable whether or not that person has petitioned for the exercise of Her Majesty's mercy.

(5) This section shall apply in relation to a finding under section 55(2) and an order under section 57(2) of this Act as it applies, respectively, in relation to a conviction and a sentence.

125 Reckoning of time spent pending appeal.

(1) Subject to subsection (2) below, where a convicted person is admitted to bail under section 112 of this Act, the period beginning with the date of his admission to bail and ending on the date of his readmission to prison in consequence of the determination or abandonment of—

(a) his appeal; or, as the case may be,

(b) any relevant appeal by the Lord Advocate under section 108 **[**F122or 108A**]** of this Act,

shall not be reckoned as part of any term of imprisonment under his sentence.

(2) The time, including any period consequent on the recall of bail, during which an appellant is in custody pending the determination of his appeal or, as the case may be, of any relevant appeal by the Lord Advocate under section 108 **[**F123or 108A**]** of this Act shall, subject to any direction which the High Court may give to the contrary, be reckoned as part of any term of imprisonment under his sentence.

(3) Subject to any direction which the High Court may give to the contrary, imprisonment of an appellant or, where the appellant is the Lord Advocate, of a convicted person—

(a) who is in custody in consequence of the conviction or sentence appealed against, shall be deemed to run as from the date on which the sentence was passed;

(b) who is in custody other than in consequence of such conviction or sentence, shall be deemed to run or to be resumed as from the date on which his appeal was determined or abandoned;

(c) who is not in custody, shall be deemed to run or to be resumed as from the date on which he is received into prison under the sentence.

(4) In this section references to a prison and imprisonment shall include respectively references to a young offenders institution or place of safety or, as respects a child sentenced to be detained under section 208 of this Act, the place directed by the Secretary of State and to detention in such institution, centre or place of safety, or, as respects such a child, place directed by the Secretary of State and any reference to a sentence shall be construed as a reference to a sentence passed by the court imposing sentence or by the High Court on appeal as the case may require.

Textual Amendments

F122 Words in s. 125(1)(b) inserted (20.10.1997) by 1997 c. 48 , **s. 18(7)(a)** ; S.I. 1997/2323 , art. 3 , **Sch. 1**

F123 Words in s. 125(2) inserted (20.10.1997) by 1997 c. 48 , **s. 18(7)(b)** ; S.I. 1997/2323 , art. 3 , **Sch. 1**

126 Extract convictions.

No extract conviction shall be issued—

(a) during the period of four weeks after the day on which the conviction took place, except in so far as it is required as a warrant for the detention of the person convicted under any sentence which has been pronounced against him; nor

(b) where an intimation of intention to appeal or, in the case of an appeal under section 106(1)(b) to (e) **[**F124, 108 or 108A**]**of this Act, a note of appeal is lodged, until the appeal, if it is proceeded with, is determined.

Textual Amendments

F124 Words in s. 126(b) substituted (20.10.1997) by 1997 c. 48 , **s. 18(8)** ; S.I. 1997/2323 , art. 3 , **Sch. 1**

127 Forms in relation to appeals.

(1) The Clerk of Justiciary shall furnish the necessary forms and instructions in relation to intimations of intention to appeal, notes of appeal or notices of application under this Part of this Act to—

(a) any person who demands them; and

(b) to officers of courts, governors of prisons, and such other officers or persons as he thinks fit.

(2) The governor of a prison shall cause the forms and instructions mentioned in subsection (1) above to be placed at the disposal of prisoners desiring to appeal or to make any application under this Part of this Act.

(3) The governor of a prison shall, if requested to do so by a prisoner, forwarded on the prisoner's behalf to the Clerk of Justiciary any intimation, note or notice mentioned in subsection (1) above given by the prisoner.

128 Fees and expenses.

Except as otherwise provided in this Part of this Act, no court fees, or other fees or expenses shall be exigible from or awarded against an appellant or applicant in respect of an appeal or application under this Part of this Act.

129 Non-compliance with certain provisions may be waived.

(1) Non-compliance with—

(a) the provisions of this Act set out in subsection (3) below; or

(b) any rule of practice for the time being in force under this Part of this Act relating to appeals,

shall not prevent the further prosecution of an appeal if the High Court or a judge thereof considers it just and proper that the non-compliance is waived or, in the manner directed by the High Court or judge, remedied by amendment or otherwise.

(2) Where the High Court or a judge thereof directs that the non-compliance is to be remedied, and the remedy is carried out, the appeal shall proceed.

(3) The provisions of this Act referred to in subsection (1) above are:—

section 94
section 103(1), (4), (6) and (7)
section 104(2) and (3)
section 105
section 106(4)
section 111
section 114
section 115
section 116

section 117
section 120(1), (3) and (4)
section 121
section 122
section 126
section 128.

(4) This section does not apply to any rule of practice relating to appeals under section 60 of this Act.

130 Bill of suspension not competent.

It shall not be competent to appeal to the High Court by bill of suspension against any conviction, sentence, judgement or order pronounced in any proceedings on indictment in the sheriff court.

131 Prosecution appeal by bill of advocation.

(1) Without prejudice to section 74 of this Act, the prosecutor's right to bring a decision under review of the High Court by way of bill of advocation in accordance with existing law and practice shall extend to the review of a decision of any court of solemn jurisdiction.

(2) Where a decision to which a bill of advocation relates is reversed on the review of the decision the prosecutor may, whether or not there has already been a trial diet at which evidence has been led, proceed against the accused by serving him with an indictment containing, subject to subsection (3) below, the charge or charges which were affected by the decision.

(3) The wording of the charge or charges referred to in subsection (2) above shall be as it was immediately before the decision appealed against.

132 Interpretation of Part VIII.

In this Part of this Act, unless the context otherwise requires—

"appellant" includes a person who has been convicted and desires to appeal under this Part of the Act;

"sentence" includes any order of the High Court made on conviction with reference to the person convicted or his wife or children, and any recommendation of the High Court as to the making of a deportation order in the case of a person convicted and the power of the High Court to pass a sentence includes a power to make any such order of the court or recommendation, and a recommendation so made by the High Court shall have the same effect for the purposes of Articles 20 and 21 of the Aliens Order 1953 as the certificate and recommendation of the convicting court.

PART IX

SUMMARY PROCEEDINGS

General

133 Application of Part IX of Act.

(1) This Part of this Act applies to summary proceedings in respect of 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 summarily.

(2) Without prejudice to subsection (1) above, this Part of this Act also applies to procedure in all courts of summary jurisdiction in so far as they have jurisdiction in respect of—

(a) any offence or the recovery of a penalty under any enactment or rule of law which does not exclude summary procedure as well as, in accordance with section 211(3) and (4) of this Act, to the enforcement of a fine imposed in solemn proceedings; and

(b) any order *ad factum praestandum*, or other order of court or warrant competent to a court of summary jurisdiction.

(3) Where any statute provides for summary proceedings to be taken under any public general or local enactment, such proceedings shall be taken under this Part of this Act.

(4) Nothing in this Part of this Act shall—

(a) extend to any complaint or other proceeding under or by virtue of any statutory provision for the recovery of any rate, tax, or impost whatsoever; or

(b) affect any right to raise any civil proceedings.

(5) Except where any enactment otherwise expressly provides, all prosecutions under this Part of this Act shall be brought at the instance of the procurator fiscal.

134 Incidental applications.

(1) This section applies to any application to a court for any warrant or order of court—

(a) as incidental to proceedings by complaint; or

(b) where a court has power to grant any warrant or order of court, although no subsequent proceedings by complaint may follow thereon.

(2) An application to which this section applies may be made by petition at the instance of the prosecutor in the form prescribed by Act of Adjournal.

(3) Where it is necessary for the execution of a warrant or order granted under this section, warrant to break open shut and lockfast places shall be implied.

Modifications etc. (not altering text)

C24 S. 134 applied (20.11.2002) by Copyright, Designs and Patents Act 1988 (c. 48) , ss. 114B(2)(a) , 204B(2)(a) , 297D(2)(a) (as inserted by Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002 (c. 25) , **ss. 3** , **4** , **5** ; S.I. 2002/2749 , **art. 2**)

S. 134 applied (7.3.2005) by The Electromagnetic Compatibility Regulations 2005 (S.I. 2005/281) , **reg. 98(1)**

135 Warrants of apprehension and search.

(1) A warrant of apprehension or search may be in the form prescribed by Act of Adjournal or as nearly as may be in such form, 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 in the form mentioned in subsection (1) above 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, police cell, or other convenient place.

(3) A person apprehended under a warrant or by virtue of power under any enactment or rule of law shall wherever practicable be brought before a court competent to deal with the case not later than in the course of the first day after he is taken into custody.

(4) The reference in subsection (3) above to the first day after he is taken into custody shall not include a Saturday, a Sunday or a court holiday prescribed for that court under section 8 of this Act; but nothing in this subsection shall prevent a person being brought before the court on a Saturday, a Sunday or such a court holiday where the court is, in pursuance of the said section 8, sitting on such day for the disposal of criminal business.

(5) A warrant of apprehension or other warrant shall not be required for the purpose of bringing before the court an accused who has been apprehended without a written warrant or who attends without apprehension in answer to any charge made against him.

Modifications etc. (not altering text)
C25 S. 135(3) excluded (19.2.2001) by 2000 c. 11 , ss. 41 , 53 , Sch. 7 para. 6 , **Sch. 8 para. 27(4)(a)** ; S.I. 2001/421 , **art. 2**

136 Time limit for certain offences.

(1) Proceedings under this Part of this Act in respect of any offence to which this section applies shall be commenced—

(a) within six months after the contravention occurred;

(b) in the case of a continuous contravention, within six months after the last date of such contravention,

and it shall be competent in a prosecution of a contravention mentioned in paragraph (b) above to include the entire period during which the contravention occurred.

(2) This section applies to any offence triable only summarily and consisting of the contravention of any enactment, unless the enactment fixes a different time limit.

(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 the warrant is executed without undue delay.

Modifications etc. (not altering text)

C26 S. 136 excluded (1.4.1999) by 1998 c. 39 , **s. 33(4)** ; S.I. 1998/2574, art. 2(2), **Sch. 2**
S. 136 excluded (3.6.1999) by S.I. 1999/1516, **reg. 9(5)**
S. 136 excluded (25.10.1999) by 1973 c. 35, **s. 11A(3)** (as inserted (25.10.1999) by 1999 c. 26, s. 31, **Sch. 7 para. 5**); S.I. 1999/2830, art. 2(1), **Sch. 1**, Pt. I
S. 136 excluded (16.2.2001) by 2000 c. 41, **s. 151(3)**; S.I. 2001/222, art. 2, **Sch. 1 Pt. I** (subject to transitional provisions in Sch. 1 Pt. II)
S. 136 excluded (16.3.2001 in accordance with art. 1(2)(3) of the amending S.I.) by S.I. 2001/947, **art. 16(8)**
S. 136 excluded (10.10.2001 in accordance with art. 1(2) of the amending S.I.) by S.I. 2001/3365, **art. 10(6)**
S. 136 excluded (25.1.2002) by S.I. 2002/111, **art. 20(9)**
S. 136 excluded (24.10.2002) by S.I. 2002/2628, **art. 16(8)**
S. 136 excluded (14.6.2003) by S.I. 2003/1519, **art. 20(8)**
S. 136 excluded (13.2.2004) by S.I. 2004/348, **art. 15(8)**
S. 136 excluded (11.2.2005) by S.I. 2005/253, **art. 9(8)**
S. 136 excluded (7.3.2005) by S.I. 2005/281, **reg. 93**
S. 136 excluded (1.10.2005) by S.I. 2005/1803, **reg. 41(2)**
S. 136 excluded (20.7.2007) by S.I. 2006/3418, **reg. 54** (with savings in regs. 7-14, 63, 64)

C27 S. 136 excluded (26.5.2008) by The Business Protection from Misleading Marketing Regulations 2008 (S.I. 2008/1276), **reg. 10(4)(5)**

C28 S. 136 excluded (26.5.2008) by The Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277), **reg. 14(4)(5)** (with reg. 28(2)(3))

C29 S. 136 restricted (26.11.2008) by Planning Act 2008 (c. 29), ss. 58(6)(7), 236, 241, **Sch. 12 para. 9** (with s. 226)

C30 S. 136 excluded (10.4.2009) by The Iran (United Nations Sanctions) Order 2009 (S.I. 2009/886), **art. 12(7)**

C31 S. 136 excluded (10.7.2009) by The North Korea (United Nations Sanctions) Order 2009 (S.I. 2009/1749), **art. 14(7)** (as amended by S.I. 2009/3213)

C32 S. 136(1) modified (21.7.1997) by 1997 c. 22, **s. 21(4)(c)**; S.I. 1997/1672, **art. 2**

C33 S. 136(3) applied (1.4.1999) by 1998 c. 39, **s. 33(5)(b)**; S.I. 1998/2574, art. 2(2), **Sch. 2**
S. 136(3) applied (30.4.1998) by S.I. 1998/955, **reg. 8(4)**
S. 136(3) applied (1.7.1996) by S.I. 1996/1500, **reg. 16(5)**
S. 136(3) applied (1.8.1996) by S.I. 1996/2005, **reg. 11(4)**
S. 136(3) applied (3.12.1996) by S.I. 1996/2999, **reg. 11(4)**
S. 136(3) applied (2.8.1999) by S.I. 1999/1872, **reg. 109(5)**
S. 136(3) applied (16.12.1999) by S.I. 1999/3315, **reg. 8(5)**
S. 136(3) applied (17.12.1999) by S.S.I. 1999/186, **reg. 8(6)**
S. 136(3) applied (29.1.2001) by S.S.I. 2000/448, **reg. 14(4)**
S. 136(3) applied (10.10.2001 in accordance with art. 1(2) of the amending S.I.) by S.I. 2001/3365, **art. 10(6)**
S. 136(3) applied (19.3.2001) by S.S.I. 2001/40, **reg. 11(4)** (which S.S.I. was revoked 2.7.2001 by S.S.I. 2001/220, **art. 13**)
S. 136(3) applied (12.5.2001) by S.S.I. 2001/140, **reg. 16(5)**
S. 136(3) applied (2.7.2001) by S.S.I. 2001/220, **reg. 11(4)**
S. 136(3) applied (28.9.2001) by S.S.I. 2001/300, **reg. 17(4)**
S. 136(3) applied (1.1.2002) by S.S.I. 2001/445, **reg. 24(2)**

S. 136(3) applied (22.3.2002) by S.S.I. 2002/139, **reg. 20(2)**
S. 136(3) applied (28.6.2002) by S.S.I. 2002/278, **reg.15(4)**
S. 136(3) applied (1.4.2002) by 1980 c. 45, s. 72(3C) (as inserted (1.4.2002) by 2002 asp 3, **s. 65(3)** (with s. 67)); S.S.I. 2002/118, **art. 2(3)**
S. 136(3) applied (1.10.2004) by 1999 c. 33, s. 92B(7) (as inserted (1.10.2004) by 2004 c. 19, **ss. 39(7)**, 48(1)-(3)); S.I. 2004/2523, **art. 2**, Sch.)
S. 136(3) applied (5.12.2005) by Civil Partnership Act 2004 (c. 33), **ss. 100(5)**, 263; S.S.I. 2005/604, **art. 2**
S. 136(3) applied (18.3.2004) by S.I. 2004/70, **reg. 21(2)**
S. 136(3) applied (31.12.2005) by S.S.I. 2005/613, **art. 45(9)**

C34 S. 136(3) extended (1.4.1996) by 1995 c. 39, **ss. 4(3)**, 53(2)
S. 136(3) extended (4.5.1999) by S.I. 1999/1110, **reg. 7(6)**
S. 136(3) applied (26.3.2006 at 0600 hours) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 5(2)**, 43 (with s. 10); S.S.I. 2005/492, **art. 3(d)**
S. 136(3) applied (1.3.2005) by S.I. 2005/218, **reg. 12(10)**
S. 136(3) applied (18.4.2005) by S.S.I. 2005/143, reg. 25, **Sch. 4 para. 9(2)**
S. 136(3) applied (12.5.2005) by S.I. 2005/1259, **art. 10(3)**
S. 136(3) applied (15.5.2005) by S.S.I. 2005/225, **reg. 21(4)**
S. 136(3) applied (9.6.2005) by S.I. 2005/1517, **art. 10(3)**
S. 136(3) applied (1.10.2005) by S.I. 2005/1803, **reg. 41(3)**
S. 136(3) applied (16.12.2005) by S.I. 2005/3432, **art. 12(3)(b)**
S. 136(3) applied (2.12.2005) by S.S.I. 2005/569, **reg. 21(2)**
S. 136(3) applied (1.9.2006) by Human Tissue (Scotland) Act 2006 (asp 4), **ss. 21(2)**, 62; S.S.I. 2006/251, **art. 3**
S. 136(3) applied (1.7.2006) by S.S.I. 2006/319, **art. 10(7)**
S. 136(3) applied (9.6.2006) by S.I. 2006/1454, **art. 13(3)(b)**
S. 136(3) applied (9.10.2006) by S.I. 2002/3026, reg. 30(2C) (as inserted by S.I. 2006/2530, **reg. 11(2)**)
S. 136(3) applied (12.10.2006) by S.I. 2006/2657, **art. 14(3)(b)** (with arts. 18, 19)
S. 136(3) applied (16.11.2006) by S.I. 2006/2952, **art. 14(3)(b)** (with art. 18)
S. 136(3) applied (16.11.2006) by S.I. 2006/2958, **art. 13(3)(b)** (with art. 17)

C35 S. 136(3) applied (9.2.2007) by The Iran (Financial Sanctions) Order 2007 (S.I. 2007/281), **art. 13(3)(b)** (with art. 17)
S. 136(3) applied (3.5.2007) by The Iran (European Community Financial Sanctions) Regulations 2007 (S.I. 2007/1374), **reg. 13(3)(b)** (with reg. 16)
S. 136(3) applied (28.9.2007) by The Less Favoured Area Support Scheme (Scotland) Regulations 2007 (S.S.I. 2007/439), **reg. 21(2)**

C36 S. 136(3) applied (20.1.2007, 6.4.2007, 1.10.2007, 6.4.2008, 1.10.2008 for certain purposes and 1.10.2009 otherwise) by Companies Act 2006 (c. 46), **ss. 1128(2)**, 1300 (with savings in s. 1133); S.I. 2006/3428, **art. 3(2)** (with art. 6); S.I. 2007/1093, **art. 2(2)(c)** (with arts. 4, 11); S.I. 2007/2194, **art. 2(1)(l)(3)(h)** (with art. 12); S.I. 2007/3495, arts. 3(3)(g), **5(3)(a)** (with arts. 7, 12); S.I. 2008/2860, **art. 3(s)** (with arts. 5, 7, 8, Sch. 2 (as amended by: S.I. 2009/1802, **art. 18**; S.I. 2009/1941, **art. 13**; and S.I. 2009/2476, **reg. 2**))

C37 S. 136(3) applied (22.3.2008) by The Leader Grants (Scotland) Regulations 2008 (S.S.I. 2008/66), **reg. 23(4)**

C38 S. 136(3) applied (24.3.2008) by The Agricultural Processing, Marketing and Co-operation Grants (Scotland) Regulations 2008 (S.I. 2008/64), **reg. 12(4)**

C39 S. 136(3) applied (29.3.2008) by The Rural Development Contracts (Rural Priorities) (Scotland) Regulations 2008 (S.S.I. 2008/100), **reg. 22(4)**

C40 S. 136(3) applied (15.5.2008) by The Rural Development Contracts (Land Managers Options) (Scotland) Regulations 2008 (S.S.I. 2008/159), regs. 1(1), **21(4)**

C41 S. 136(3) applied (18.5.2008) by The Land Managers Skills Development Grants (Scotland) Regulations 2008 (S.S.I. 2008/162), **reg. 13(4)**

C42 S. 136(3) applied (27.11.2008) Counter-Terrorism Act 2008 (c. 28), ss. 62, 100, **Sch. 7 para. 35(2)** (with s. 101(2), Sch. 7 para. 43)
C43 S. 136(3) applied (26.1.2009) by The Operation of Air Services in the Community Regulations 2009 (S.I. 2009/41), **reg. 30(5)**
C44 S. 136(3) applied (10.4.2009) by The Iran (United Nations Sanctions) Order 2009 (S.I. 2009/886), **art. 12(7)**
C45 S. 136(3) applied (24.4.2009) by The Zimbabwe (Financial Sanctions) Regulations 2009 (S.I. 2009/847), **reg. 14(3)(b)**
C46 S. 136(3) applied (10.8.2009) by The Terrorism (United Nations Measures) Order 2009 (S.I. 2009/1747), **art. 22(3)(b)** (with art. 25)
C47 S. 136(3) applied (1.10.2009) by Criminal Justice Act 1993 (c. 36), s. 61A(3) (as inserted by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 141** (with art. 10))
C48 S. 136(3) applied (1.1.2010) by The Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009 (S.I. 2009/3263), **reg. 10(7)**
C49 S. 136(3) applied by Child Support Act 1991 (c. 48), s. 14A(8) (as inserted (14.1.2010) by Welfare Reform Act 2009 (c. 24), **ss. 55(3)**, 61; S.I. 2010/45, **art. 2(3)**)
C50 S. 136(3) applied (8.4.2010) by The Al- Qaida and Taliban (Asset-Freezing) Regulations 2010 (S.I. 2010/1197), regs. 1(1), **11(3)(b)** (with reg. 13)
C51 S. 136(3) applied (2.7.2010) by The Less Favoured Area Support Scheme (Scotland) Regulations 2010 (S.S.I. 2010/273), regs. 1(1), **21(2)** (with reg. 1(3))
C52 S. 136(3) applied (17.12.2010) by Terrorist Asset- Freezing etc. Act 2010 (c. 38), **ss. 36(2)(b)**, 55 (with s. 44)
C53 S. 136(3) applied (4.1.2011) by The Somalia (Asset-Freezing) Regulations 2010 (S.I. 2010/2956), **reg. 16(3)(b)** (with reg. 19)

VALID FROM 10/03/2008

[F125 136A Time limits for transferred and related cases

(1) This section applies where the prosecutor recommences proceedings by complaint containing both—

(a) a charge to which proceedings—

(i) transferred to a court by authority of an order made in pursuance of section 137A(1) of this Act; or

(ii) transferred to, or taken at, a court by authority of an order made in pursuance of section 137B(1), (1A) or (1C) of this Act,

relate; and

(b) a charge to which previous proceedings at that court relate.

(2) Where this section applies, proceedings for an offence charged in that complaint are, for the purposes of—

(a) section 136 of this Act (so far as applying to the offence);

(b) any provision of any other enactment for a time limit within which proceedings are to be commenced (so far as applying to the offence); and

(c) any rule of law relating to delay in bringing proceedings (so far as applying to the offence),

to be regarded as having been commenced when any previous proceedings for the offence were first commenced.**]**

Textual Amendments

F125 S. 136A inserted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) , **ss. 23** , 84 ; S.S.I. 2008/42 , **art. 3** , Sch. (subject to arts. 4 - 6)

VALID FROM 10/03/2008

[F126136BTime limits where fixed penalty offer etc. made

(1) For the purposes of section 136 of this Act, and any provision of any other enactment for a time limit within which proceedings are to be commenced, in calculating the period since a contravention occurred—

(a) where a fixed penalty offer is made under section 302(1) of this Act, the period between the date of the offer and—

(i) the receipt by the procurator fiscal of a notice under section 302(4) of this Act;

(ii) a recall of the fixed penalty by virtue of section 302C of this Act,

shall be disregarded;

(b) where a compensation offer is made under section 302A(1) of this Act, the period between the date of the offer and—

(i) the receipt by the procurator fiscal of a notice under section 302A(4) of this Act;

(ii) a recall of the offer by virtue of section 302C of this Act,

shall be disregarded;

(c) where a work offer is made under section 303ZA(1) of this Act, the period between the date of the offer and—

(i) if the alleged offender does not accept the offer in the manner described in section 303ZA(5) of this Act, the last date for notice of acceptance of the offer;

(ii) if the alleged offender accepts the offer as so described, but fails to complete the subsequent work order, the date specified for completion of the order,

shall be disregarded.

(2) A certificate purporting to be signed by or on behalf of the prosecutor which states a period to be disregarded by virtue of subsection (1) above is sufficient authority for the period to be disregarded.**]**

Textual Amendments

F126 S. 136B inserted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) , **ss. 54** , 84 ; S.S.I. 2008/42 , **art. 3** , Sch. (subject to art. 6)

137 Alteration of diets.

(1) 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 and fix an earlier diet in lieu.

(2) Where the prosecutor and the accused make joint application to the court (orally or in writing) for postponement of a diet which has been fixed, the court shall discharge the diet and fix a later diet in lieu unless the court considers that it should not do so because there has been unnecessary delay on the part of one of more of the parties.

(3) Where all the parties join in an application under subsection (2) above, the court may proceed under that subsection without hearing the parties.

(4) Where the prosecutor has intimated to the accused that he desires to postpone or accelerate a diet which has been fixed, and the accused refuses, or any of the accused refuse, to make a joint application to the court for that purpose, the prosecutor may make an incidental application for that purpose under section 134 of this Act; and after giving the parties an opportunity to be heard, the court may discharge the diet and fix a later diet or, as the case may be, an earlier diet in lieu.

(5) Where an accused had intimated to the prosecutor and to all the other accused that he desires such postponement or acceleration and the prosecutor refuses, or any of the other accused refuse, to make a joint application to the court for that purpose, the accused who has so intimated may apply to the court for that purpose; and, after giving the parties an opportunity to be heard, the court may discharge the diet and fix a later diet or, as the case may be, an earlier diet in lieu.

VALID FROM 10/12/2007

[F127 137ZA Refixing diets

(1) This section applies where in a summary prosecution any diet has been fixed for a non-sitting day.

(2) The court may at any time before the non-sitting day—
- (a) discharge the diet; and
- (b) fix a new diet for a date earlier or later than that for which the discharged diet was fixed.

(3) That is, by acting—
- (a) of the court's own accord; and
- (b) without the need for a hearing for the purpose.

(4) In the case of a trial diet—
- (a) the prosecutor;
- (b) the accused,

shall be entitled to an adjournment of the new diet fixed if the court is satisfied that it is not practicable for that party to proceed with the case on that date.

(5) The power of the court under subsection (1) above is not exercisable for the sole purpose of ensuring compliance with a time limit applying in the proceedings.

(6) In subsections (1) and (2) above, a "non-sitting day" is a day on which the court is under this Act not required to sit.**]**

Textual Amendments

F127 S. 137ZA inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 39(2)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S. I. 2007/527)

VALID FROM 27/06/2003

[F128 137A Transfer of sheriff court summary proceedings within sheriffdom

(1) Where an accused person has been cited to attend a diet of the sheriff court the prosecutor may apply to the sheriff for an order for the transfer of the proceedings to a sheriff court in any other district in that sheriffdom and for adjournment to a diet of that court.

(2) On an application under subsection (1) above the sheriff may make such order as is mentioned in that subsection.**]**

Textual Amendments

F128 Ss. 137A, 137B inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7) , **ss. 58(2)** , 89 ; S.S.I. 2003/288 , **art. 2** , Sch.

VALID FROM 27/06/2003

[F128 137B Transfer of sheriff court summary proceedings outwith sheriffdom

(1) Where—

(a) an accused person has been cited to attend a diet of the sheriff court; or

(b) paragraph (a) does not apply but it is competent so to cite an accused person,

and the prosecutor is informed by the sheriff clerk that, because of exceptional circumstances which could not reasonably have been foreseen, it is not practicable for that court or any other sheriff court in that sheriffdom to proceed with the case, the prosecutor—

(i) may, where paragraph (b) above applies, so cite the accused; and

(ii) shall, where paragraph (a) above applies or the accused is so cited by virtue of paragraph (i) above, as soon as practicable apply to the sheriff principal for an order for the transfer of the proceedings to a sheriff court in another sheriffdom and for adjournment to a diet of that court.

(2) On an application under subsection (1) above the sheriff principal may make the order sought, provided that the sheriff principal of the other sheriffdom consents.

(3) On the application of the prosecutor, a sheriff principal who has made an order under subsection (2) above may, if the sheriff principal of the other sheriffdom mentioned in that subsection consents—

(a) revoke; or

(b) vary so as to restrict the effect of,

that order.**]**

Textual Amendments

F128 Ss. 137A, 137B inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7) , **ss. 58(2)** , 89 ; S.S.I. 2003/288 , **art. 2** , Sch.

VALID FROM 10/03/2008

[F129137CCustody cases: initiating proceedings outwith sheriffdom

(1) Where the prosecutor believes—

(a) that, because of exceptional circumstances (and without an order under subsection (3) below), it is likely that there would be an unusually high number of accused persons appearing from custody for the first calling of cases in summary prosecutions in the sheriff courts in the sheriffdom; and

(b) that it would not be practicable for those courts to deal with all the cases involved,

the prosecutor may apply to the sheriff principal for the order referred to in subsection (2) below.

(2) For the purposes of subsection (1) above, the order is for authority for summary proceedings against some or all of the accused persons to be—

(a) taken at a sheriff court in another sheriffdom; and

(b) maintained—

(i) there; or

(ii) at any of the sheriff courts referred to in subsection (1) above as may at the first calling of the case be appointed for further proceedings.

(3) On an application under subsection (1) above, the sheriff principal may make the order sought with the consent of the sheriff principal of the other sheriffdom.

(4) An order under subsection (3) above may be made by reference to a particular period or particular circumstances.

Textual Amendments

F129 Ss. 137C, 137D inserted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) , **ss. 22(3)** , 84 ; S.S.I. 2008/42 , **art. 3** , Sch. (subject to arts. 4 - 6)

VALID FROM 28/03/2011

[F129[Transfer of JP court proceedings within sheriffdom
F130137CA

(1) Subsection (2) applies—

(a) where the accused person has been cited in summary proceedings to attend a diet of a JP court, or

(b) if the accused person has not been cited to such a diet, where summary proceedings against the accused have been commenced in a JP court.

(2) The prosecutor may apply to a justice for an order for the transfer of the proceedings to another JP court in the sheriffdom (and for adjournment to a diet of that court).

(3) On an application under subsection (2), the justice may make the order sought.

(4) In this section and sections 137CB and 137CC, "justice" does not include the sheriff.

Textual Amendments

F129 Ss. 137C, 137D inserted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) , **ss. 22(3)** , 84 ; S.S.I. 2008/42 , **art. 3** , Sch. (subject to arts. 4 - 6)

F130 Ss. 137CA-137CC inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 61**, 206(1)

VALID FROM 28/03/2011

137CB Transfer of JP court proceedings outwith sheriffdom

(1) Subsection (2) applies where the clerk of a JP court informs the prosecutor that, because of exceptional circumstances which could not reasonably have been foreseen, it is not practicable for the JP court or any other JP court in the sheriffdom to proceed with some or all of the summary cases due to call at a diet.

(2) The prosecutor shall as soon as practicable apply to the sheriff principal for an order for the transfer of the proceedings to a JP court in another sheriffdom (and for adjournment to a diet of that court).

(3) Subsection (4) applies where—

(a) either—

(i) the accused person has been cited in summary proceedings to attend a diet of a JP court, or

(ii) if the accused person has not been cited to such a diet, summary proceedings against the accused have been commenced in a JP court, and

(b) there are also summary proceedings against the accused person in a JP court in another sheriffdom.

(4) The prosecutor may apply to a justice for an order for the transfer of the proceedings to a JP court in the other sheriffdom (and for adjournment to a diet of that court).

(5) Subsection (6) applies where—

(a) the prosecutor intends to take summary proceedings against an accused person in a JP court, and

(b) there are also summary proceedings against the accused person in a JP court in another sheriffdom.

(6) The prosecutor may apply to a justice for an order for authority for the proceedings to be taken at a JP court in the other sheriffdom.

(7) On an application under subsection (2), the sheriff principal may make the order sought with the consent of the sheriff principal of the other sheriffdom.

(8) On an application under subsection (4) or (6), the justice is to make the order sought if—

(a) the justice considers that it would be expedient for the different cases involved to be dealt with by the same court, and

(b) a justice of the other sheriffdom consents.

(9) On the application of the prosecutor, the sheriff principal who has made an order under subsection (7) may, with the consent of the sheriff principal of the other sheriffdom—

(a) revoke the order, or

(b) vary it so as to restrict its effect.

(10) On the application of the prosecutor, the justice who has made an order under subsection (8) (or another justice of the same sheriffdom) may, with the consent of a justice of the other sheriffdom—

(a) revoke the order, or

(b) vary it so as to restrict its effect.

Textual Amendments

F129 Ss. 137C, 137D inserted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) , **ss. 22(3)** , 84 ; S.S.I. 2008/42 , **art. 3** , Sch. (subject to arts. 4 - 6)

F130 Ss. 137CA-137CC inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 61**, 206(1)

VALID FROM 28/03/2011

137CC Custody cases: initiating JP court proceedings outwith sheriffdom

(1) Subsection (2) applies where the prosecutor believes—

(a) that, because of exceptional circumstances (and without an order under subsection (3)), it is likely that there would be an unusually high number of accused persons appearing from custody for the first calling of cases in summary prosecutions in the JP courts in the sheriffdom, and

(b) that it would not be practicable for those courts to deal with all the cases involved.

(2) The prosecutor may apply to the sheriff principal for an order authorising summary proceedings against some or all of the accused persons to be—

(a) taken at a JP court in another sheriffdom, and

(b) maintained—

(i) at that JP court, or

(ii) at any of the JP courts referred to in subsection (1) as may at the first calling of the case be appointed for further proceedings.

(3) On an application under subsection (2), the sheriff principal may make the order sought with the consent of the sheriff principal of the other sheriffdom.

(4) An order under subsection (3) may be made by reference to a particular period or particular circumstances.**]]**

Textual Amendments

F129 Ss. 137C, 137D inserted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) , **ss. 22(3)** , 84 ; S.S.I. 2008/42 , **art. 3** , Sch. (subject to arts. 4 - 6)

F130 Ss. 137CA-137CC inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 61**, 206(1)

VALID FROM 10/12/2007

137D Transfer of JP court proceedings to the sheriff court

(1) Where an accused person is due to be sentenced at a sheriff court for an offence, the prosecutor may apply to the sheriff for an order for—

(a) the transfer to the sheriff court of any case against the accused in respect of which sentencing is pending at any JP court in the sheriffdom; and

(b) the case to call at a diet of the sheriff court.

(2) On an application under subsection (1) above, the sheriff is to make the order sought if the sheriff considers that it would be expedient for the different cases to be disposed of at the same court at the same time.

(3) If, in a case transferred under subsection (1) above, the finding of guilt was before a justice of the peace, the sentencing powers of the sheriff in the case are restricted to those of the justice.**]**

Textual Amendments

F129 Ss. 137C, 137D inserted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) , **ss. 22(3)** , 84 ; S.S.I. 2008/42 , **art. 3** , Sch. (subject to arts. 4 - 6)

Modifications etc. (not altering text)

C54 S. 137D(1)(a) applied (10.12.2007) by The District Courts and Justices of the Peace (Scotland) Order 2007 (S.S.I. 2007/480) , **art. 4(1)(b)**

Complaints

138 Complaints.

(1) All proceedings under this Part of this Act for the trial of offences or recovery of penalties shall be instituted by complaint signed by the prosecutor or by a solicitor on behalf of a prosecutor other than the procurator fiscal.

(2) The complaint shall be in the form—

(a) set out in Schedule 5 to this Act; or

(b) prescribed by Act of Adjournal,

or as nearly as may be in such form.

(3) A solicitor may appear for and conduct any prosecution on behalf of a prosecutor other than the procurator fiscal.

(4) Schedule 3 to this Act shall have effect as regards complaints under this Act.

139 Complaints: orders and warrants.

(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 assigning a diet for the disposal of the case to which the accused may be cited as mentioned in section 141 of this Act;

(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 or warrant of court or warrant which may be competent in the circumstances.

(2) The power of a judge under subsection (1) above—

(a) to pronounce an order assigning a diet for the disposal of the case may be exercised on his behalf by the clerk of court;

(b) 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.

Citation

140 Citation.

(1) This Act shall be a sufficient warrant for **[**[F131]—

(a) the citation of witnesses for precognition by the prosecutor, whether or not any person has been charged with the offence in relation to which the precognition is taken; and

(b)**]** 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 prescribed by Act of Adjournal or as nearly as may be in such form 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.

F132(3) . . . . . .

Textual Amendments

F131 S. 140(1)(a) and "(b)" inserted (1.8.1997) by 1997 c. 48, **s. 57(2)(a)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F132 S. 140(3) repealed (1.8.1997) by 1997 c. 48, ss. 57(2)(b), 62(2), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

141 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 shall be effected by delivering the citation to him personally or leaving it for him at his dwelling-house or place of business with a resident or, as the case may be, employee at that place or, where he has no known dwelling-house or place of business, at any other place in which he may be resident at the time.

(2) Notwithstanding subsection (1) above, citation may also be effected—

(a) 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 the vessel and connected with it;

(b) where the accused is a partnership, association or body corporate—

(i) if the citation is left at its ordinary place of business with a partner, director, secretary or other official; or

(ii) if it is cited in the same manner as if the proceedings were in a civil court; or

(c) 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) Subject to subsection (4) below, the citation of the accused or a witness to a sitting or diet or adjourned sitting or diet as mentioned in subsection (1) above shall be effective if it is F133. . .—

(a) in the case of the accused, **[**F134signed by the prosecutor and**]**sent by post in a registered envelope or through the recorded delivery service; and

(b) in the case of a witness, sent **[**F134by or on behalf of the prosecutor**]**by ordinary post,

to the dwelling-house or place of business of the accused or witness or, if he has no known dwelling-house or place of business, to any other place in which he may be resident at the time.

(4) Where the accused fails to appear at a diet or sitting or adjourned diet or sitting to which he has been cited in the manner provided by this section, subsections (3) and

(5) to (7) of section 150 of this Act shall not apply unless it is proved to the court that he received the citation or that its contents came to his knowledge.

(5) 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 as mentioned in subsection (3) above 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 subsection (4) above.

[F135(5A) The citation of a witness to a sitting or diet or adjourned sitting or diet as mentioned in subsection (1) above shall be effective if it is sent by the accused's solicitor by ordinary post to the dwelling house or place of business of the witness or, if he has no known dwelling house or place of business, to any other place in which he may be resident at the time.**]**

(6) When the citation of any person is effected by post in terms of this section or any other provision of this Act to which this section is applied, the induciae shall be reckoned from 24 hours after the time of posting.

(7) It shall be sufficient evidence that a citation has been sent by post in terms of this section or any other provision of this Act mentioned in subsection (6) above, if there is produced in court a written execution, signed by the person who signed the citation in the form prescribed by Act of Adjournal, or as nearly as may be in such form, together with the post office receipt for the relative registered or recorded delivery letter.

Textual Amendments

F133 Words in s. 141(3) repealed (1.8.1997) by 1997 c. 48, s. 62(1)(2), Sch. 1 para. 21(19)(a)(i), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F134 Words in s. 141(3)(a)(b) inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(19)(a)(ii)(iii)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F135 S. 141(5A) inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(19)(b)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

Children

142 Summary proceedings against children.

(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 for the purposes of such proceedings 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 news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings;

(d) such other persons as the court may specially authorise to be present.

(2) 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.

(3) 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 provided that he appears before a sheriff or a justice at least once every 21 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.

(4) 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.

(5) This section does not apply to summary proceedings before the sheriff in respect of an offence where a child has been charged jointly with a person who is not a child.

Companies

143 Prosecution of companies, etc.

(1) Without prejudice to any other or wider powers conferred by statute, this section shall apply in relation to the prosecution by summary procedure of a partnership, association, body corporate or body of trustees.

(2) Proceedings may be taken against the partnership, association, body corporate or body of trustees in their corporate capacity, and in that event any penalty imposed shall be recovered by civil diligence in accordance with section 221 of this Act.

(3) Proceedings may be taken against an individual representative of a partnership, association or body corporate as follows:—

(a) in the case of a partnership or firm, any one of the partners, or the manager or the person in charge or locally in charge of its affairs;

(b) in the case of an association or body corporate, the managing director or the secretary or other person in charge, or locally in charge, of its affairs,

may be dealt with as if he was the person offending, and the offence shall be deemed to be the offence of the partnership, association or body corporate.

First diet

144 Procedure at first diet.

(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, unless the court adjourns the case under the section 145 of this Act and subject to subsection (4) below, be asked to plead to the charge.

(2) 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 the intimation has been made or authorised by the accused; or

(b) counsel or a solicitor, or a person not being counsel or 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,

subsection (3) below shall apply.

(3) Where this subsection applies—

(a) in the case of a plea of not guilty, this Part of this Act except section 146(2) shall apply in like manner as if the accused had appeared and tendered the plea; and

(b) 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) Any objection to the competency or relevancy of a summary complaint or the proceedings thereon, or any denial that the accused is the person charged by the police with the offence shall be stated before the accused pleads to the charge or any plea is tendered on his behalf.

(5) No objection or denial such as is mentioned in subsection (4) above shall be allowed to be stated or issued at any future diet in the case except with the leave of the court, which may be granted only on cause shown.

(6) Where in pursuance of subsection (3)(b) above 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 detention in a young offenders institution, remand centre or other establishment.

(7) In this section a reference to a plea of guilty shall include a reference to a plea of guilty to only part of the charge, but where a plea of guilty to only part of a charge is not accepted by the prosecutor it shall be deemed to be a plea of not guilty.

(8) It shall not be competent for any person appearing to answer a complaint, or for counsel or a solicitor appearing for the accused in his absence, to plead want of due citation or informality therein or in the execution thereof.

(9) In this section, a reference to the first calling of a case includes a reference to any adjourned diet fixed by virtue of section 145 of this Act.

145 Adjournment for inquiry at first calling.

(1) Without prejudice to section 150(1) to (7) of this Act, at the first calling of a 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, subject to subsections (2) and (3) below, the court may from time to time so adjourn the case.

(2) Where the accused is remanded in custody, the total period for which he is so remanded under this section shall not exceed 21 days and no one period of adjournment shall, except on special cause shown, exceed 7 days.

(3) Where the accused is remanded on bail or ordained to appear, no one period of adjournment shall exceed 28 days.

VALID FROM 30/06/2007

[F136 145ZA Adjournment where assessment order made at first calling

Where the accused is present at the first calling of a case in a summary prosecution the court may, where it makes an assessment order in respect of the accused, adjourn the case under this section for a period not exceeding 28 days without calling on the accused to plead to any charge against him; and the court may so adjourn the case for a further period not exceeding 7 days.**]**

Textual Amendments

F136 S. 145ZA inserted (30.6.2007) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 75(b)**, 79; S.S.I. 2007/334, **art. 2(a)**, Sch. 1

VALID FROM 27/06/2003

[F137 145A Adjournment at first calling to allow accused to appear etc.

(1) Without prejudice to section 150(1) to (7) of this Act, where the accused is not present at the first calling of the case in a summary prosecution, the court may (whether or not the prosecutor is able to provide evidence that the accused has been duly cited) adjourn the case under this section for such period as it considers appropriate; and subject to subsections (2) and (3) below, the court may from time to time so adjourn the case.

(2) An adjournment under this section shall be—

(a) for the purposes of allowing—

(i) the accused to appear in answer to the complaint; or

(ii) time for inquiry into the case; or

(b) for any other cause the court considers reasonable.

(3) No one period of adjournment under this section shall exceed 28 days.**]**

Textual Amendments

F137 S. 145A inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 63(4)**, 89; S.S.I. 2003/288, **art. 2**, Sch.

146 Plea of not guilty.

(1) This section applies where the accused in a summary prosecution—

(a) pleads not guilty to the charge; or

(b) pleads guilty to only part of the charge and the prosecutor does not accept the partial plea.

(2) The court may proceed to trial at once unless either party moves for an adjournment and the court considers it expedient to grant it.

(3) The court may adjourn the case for trial to as early a diet as is consistent with the just interest of both parties, and the prosecutor shall, if requested by the accused, furnish him with a copy of the complaint if he does not already have one.

(4) Where the accused is brought before the court from custody the court shall inform the accused of his right to an adjournment of the case for not less than 48 hours and if he requests such adjournment before the prosecutor has commenced his proof, subject to subsection (5) below, the adjournment shall be granted.

(5) Where the court considers that it is necessary to secure the examination of witnesses who otherwise would not be available, the case may proceed to trial at once or on a shorter adjournment than 48 hours.

(6) 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—

(a) if he is neither granted bail nor ordained to appear; or

(b) if he is granted bail on a condition imposed under section 24(6) of this Act that a sum of money is deposited in court, until the accused or a cautioner on his behalf has so deposited that sum.

(7) The court may from time to time 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 the continuation to the accused.

(8) It shall not be necessary for the prosecutor to establish a charge or part of a charge to which the accused pleads guilty.

(9) The court may, in any case where it considers it 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.

Pre-trial procedure

147 Prevention of delay in trials.

(1) Subject to subsections (2) and (3) below, a person charged with an offence in summary proceedings shall not be detained in that respect for a total of more than 40 days after the bringing of the complaint in court unless his trial is commenced within that period, failing which he shall be liberated forthwith and thereafter he shall be for ever free from all question or process for that offence.

(2) The sheriff may, on application made to him for the purpose, extend the period mentioned in subsection (1) above and order the accused to be detained awaiting trial for such period as he thinks fit where he is satisfied that delay in the commencement of the trial is due to—

(a) the illness of the accused or of a judge;

(b) the absence or illness of any necessary witness; or

(c) any other sufficient cause which is not attributable to any fault on the part of the prosecutor.

(3) The grant or refusal of any application to extend the period mentioned in subsection (1) above may be appealed against by note of appeal presented to the High Court; and that Court may affirm, reverse or amend the determination made on such application.

(4) For the purposes of this section, a trial shall be taken to commence when the first witness is sworn.

Modifications etc. (not altering text)

C55 S. 147 applied (with modifications) (1.10.1997) by S.I. 1997/1776, art. 2, **Sch. 1 paras. 5-7**; S.I. 1997/2200, **arts. 1**, 2 (subject to transitional provisions in art. 5)
S. 147 extended (1.10.1997) by 1997 c. 43, s. 41, **Sch. 1 Pt. II para. 10(1)(a)**; S.I. 1997/2200, **art. 2** (subject to transitional provisions in art. 5)
S. 147 modified (1.10.1997) by 1997 c. 43, s. 41, **Sch. 1 Pt. II para. 11(1)(a)**; S.I. 1997/2200, **art. 2** (subject to transitional provisions in art. 5)

148 Intermediate diet.

(1) **[**F138The court may, when adjourning a case for trial in terms of section 146(3) of this Act, and may also, at any time thereafter, whether before, on or after any date assigned as a trial diet**]**, fix a diet (to be known as an intermediate diet) for the purpose of ascertaining, so far as is reasonably practicable, whether the case is likely to proceed to trial on **[**F138any date assigned as a trial diet**]** and, in particular—

(a) the state of preparation of the prosecutor and of the accused with respect to their cases;

(b) whether the accused intends to adhere to the plea of not guilty; and

(c) the extent to which the prosecutor and the accused have complied with the duty under section 257(1) of this Act.

(2) Where at an intermediate diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—

(a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and

(b) may fix a further intermediate diet.

(3) Subject to subsection (2) above, the court may, if it considers it appropriate to do so, adjourn an intermediate diet.

(4) At an intermediate diet, the court may ask the prosecutor and the accused any question for the purposes mentioned in subsection (1) above.

(5) The accused shall attend an intermediate diet of which he has received intimation or to which he has been cited unless—

(a) he is legally represented; and

(b) the court considers that there are exceptional circumstances justifying him not attending.

(6) A plea of guilty may be tendered at the intermediate diet.

(7) The foregoing provisions of this section shall have effect as respects any court prescribed by the Secretary of State by order, in relation to proceedings commenced after such date as may be so prescribed, with the following modifications—

(a) in subsection (1), for the word "may" **[**F139where it first appears,**]** there shall be substituted " shall, subject to subsection (1A) below, "; and

(b) after subsection (1) there shall be inserted the following subsections—

"(1A) If, on a joint application by the prosecutor and the accused made at any time before the commencement of the intermediate diet, the court considers it inappropriate to have such a diet, the duty under subsection (1) above shall not apply and the court shall discharge any such diet already fixed.

(1B) The court may consider an application under subsection (1A) above without hearing the parties.".

(8) An order under subsection (7) above shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F138 Words in s. 148(1) substituted (retrospective to 1.4.1996) by 1998 c. 10, **s. 1(1)(a)(i)(ii)(2)**

F139 Words in s. 148(7)(a) inserted (retrospective to 1.4.1996) by 1998 c. 10, **s. 1(1)(b)(2)**

VALID FROM 01/11/2002

[F140**148A Interim diet: sexual offence to which section 288C of this Act applies**

(1) Where, in a case which is adjourned for trial, the charge is of committing a sexual offence to which section 288C of this Act applies, the court shall order that, before the trial diet, there shall be a diet under this section and ordain the accused then to attend.

(2) At a diet under this section, the court shall ascertain whether or not the accused has engaged a solicitor for the purposes of his defence at the trial.

(3) Where, following inquiries for the purposes of subsection (2) above, it appears to the court that the accused has not engaged a solicitor for the purposes of his defence at his trial, it may adjourn the diet under this section for a period of not more than 48 hours and ordain the accused then to attend.

(4) A diet under this section may be conjoined with an intermediate diet.

(5) A court may, at a diet under this section, postpone the trial diet.

(6) The court may dispense with a diet under this section previously ordered, but only if a solicitor engaged by the accused for the purposes of the defence of the accused at the trial has, in writing—

(a) confirmed his engagement for that purpose; and

(b) requested that the diet be dispensed with.

(7) Where—

(a) a solicitor has requested, under subsection (6) above, that a diet under this section be dispensed with; and

(b) before that diet has been held or dispensed with, the solicitor—

(i) is dismissed by the accused; or

(ii) withdraws,

the solicitor shall forthwith inform the court in writing of those facts.

(8) It is the duty of a solicitor who—

(a) was engaged for the purposes of the defence of the accused at the trial—

(i) at the time of a diet under this section; or

(ii) in the case of a diet which, under subsection (6) above, is dispensed with, at the time when it was so dispensed with; and

(b) after that time but before the trial diet—

(i) is dismissed by the accused; or

(ii) withdraws,

forthwith to inform the court in writing of those facts.

(9) On being so informed, the court shall order a further diet under this section.**]**

Textual Amendments

F140 S. 148A inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), s. 3, **Sch. para. 11**; S.S.I. 2002/443, **art. 3**

VALID FROM 01/04/2007

[F141 148B Pre-trial procedure in sheriff court where no intermediate diet is fixed

(1) Where, in any summary proceedings in the sheriff court, no intermediate diet is fixed, the court shall, at the trial diet before the first witness is sworn—

(a) ascertain whether subsection (2) below applies to any person who is to give evidence at or for the purposes of the trial or to the accused and, if so,

consider whether it should make an order under section 271A(7) or 271D(2) of this Act in relation to the person or, as the case may be, the accused, and

(b) if—

(i) section 288E of this Act applies to the proceedings, or

(ii) an order under section 288F(2) has been made in the proceedings,

ascertain whether or not the accused has engaged a solicitor for the purposes of his defence at the trial.

(2) This subsection applies—

(a) to a person who is to give evidence at or for the purposes of the trial if that person is, or is likely to be, a vulnerable witness,

(b) to the accused if, were he to give evidence at or for the purposes of the trial, he would be, or be likely to be, a vulnerable witness.

(3) Where, following inquiries for the purposes of subsection (1)(b) above, it appears to the court that the accused has not engaged a solicitor for the purposes of his defence at the trial, the court may adjourn the trial diet for a period of not more than 48 hours and ordain the accused then to attend.

(4) At the trial diet, the court may ask the prosecutor and the accused any question in connection with any matter which it is required to ascertain or consider under subsection (1) above.**]**

Textual Amendments

F141 S. 148B inserted (1.4.2007 for certain purposes and otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 9**, 25; S.S.I. 2007/101, **art. 2** (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

VALID FROM 10/12/2007

[F142148ŒEngagement, dismissal and withdrawal of solicitor representing accused

(1) In summary proceedings, it is the duty of a solicitor who is engaged by the accused for the purposes of his defence at trial to notify the court and the prosecutor of that fact forthwith in writing.

(2) The duty under subsection (1) above shall be regarded as having been complied with if the solicitor has represented the accused at the first calling of the case—

(a) by submitting a written intimation of the accused's plea as described in subsection (2)(a) of section 144 of this Act; or

(b) by appearing on behalf of the accused—

(i) as described in subsection (2)(b) of that section; or

(ii) with the accused present,

and has, when acting as described in paragraph (a) or (b) above, notified the court and the prosecutor orally or in writing that the solicitor is also engaged by the accused for the purposes of his defence at trial.

(3) Where a solicitor referred to in subsection (1) above—

(a) is dismissed by the accused; or

(b) withdraws,

it is the duty of the solicitor to notify the court and the prosecutor of that fact forthwith in writing.

Textual Amendments

F142 Ss. 148C, 148D inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 21**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

VALID FROM 10/12/2007

148D Service etc. on accused through a solicitor

(1) In summary proceedings, anything which is to be served on or given, notified or otherwise intimated to, the accused (except service of a complaint) shall be taken to be so served, given, notified or intimated if it is, in such form and manner as may be prescribed by Act of Adjournal, served on or given, notified or intimated to (as the case may be) the solicitor described in subsection (2) below at that solicitor's place of business.

(2) That solicitor is any solicitor—

(a) who—

(i) has given notice under subsection (1) of section 148C of this Act that that solicitor is engaged by the accused for the purposes of the accused's defence at the trial; and

(ii) has not given notice under subsection (3) of that section;

(b) who has represented the accused as mentioned in subsection (2) of that section; and—

(i) has given notice as mentioned in that subsection; and

(ii) has not given notice under subsection (3) of that section; or

(c) who—

(i) has been appointed to act for the purposes of the accused's defence at the trial under section 150A(4)(b) or (7) or 288D of this Act; and

(ii) has not been relieved of the appointment by the court.**]**

Textual Amendments

F142 Ss. 148C, 148D inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 21**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

F143 149 Alibi.

It shall not be competent for the accused in a summary prosecution to found on a plea of alibi unless he gives, at any time before the first witness is sworn, 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; and, on such notice being given, the prosecutor shall be entitled, if he so desires, to an adjournment of the case.

Textual Amendments

F143 S. 149B substituted (10.12.2007) for ss. 149, 149A by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 19**, 84; S.S.I. 2007/479, art. 3(1) , Sch. (subject to art. 7) (as amended by S.S.I. 2007/527)

VALID FROM 01/11/2002

[F144F145149A Notice of defence plea of consent

(1) It shall not be competent for the accused in a summary prosecution for an offence to which section 288C of this Act applies to found on a defence of consent unless, not less than 10 clear days before the trial diet, he gives notice to the prosecutor of the defence and of the witnesses by whom he proposes to maintain it.

(2) The court may, however, on cause shown, allow the accused to maintain such a defence after giving such notice although given after the time limit specified in subsection (1) above.

(3) In subsection (1) above, the reference to a defence of consent is a reference to the defence which is stated by reference to the complainer's consent to the act which is the subject matter of the charge or the accused's belief as to that consent.

(4) In subsection (3) above, "complainer" has the same meaning as in section 274 of this Act.**]**

Textual Amendments

F144 S. 149A inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), **s. 6(2)**; S.S.I. 2002/443, **art. 3** (with art. 4(4))

F145 S. 149B substituted (10.12.2007) for ss. 149, 149A by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 19**, 84; S.S.I. 2007/479, art. 3(1) , Sch. (subject to art. 7) (as amended by S.S.I. 2007/527)

VALID FROM 10/12/2007

[F146149B Notice of defences

(1) It is not competent for an accused in a summary prosecution to found on a defence to which this subsection applies unless—

(a) notice of the defence has been given to the prosecutor in accordance with subsection (5) below; or

(b) the court, on cause shown, allows the accused to found on the defence despite the failure so to give notice of it.

(2) Subsection (1) above applies—

(a) to a special defence;

(b) to a defence which may be made out by leading evidence calculated to exculpate the accused by incriminating a co-accused;

(c) to a defence of automatism or coercion;

(d) in a prosecution for an offence to which section 288C of this Act applies, to a defence of consent.

(3) In subsection (2)(d) above, the reference to a defence of consent is a reference to the defence which is stated by reference to the complainer's consent to the act which is the subject matter of the charge or the accused's belief as to that consent.

(4) In subsection (3) above, "complainer" has the same meaning as in section 274 of this Act.

(5) Notice of a defence is given in accordance with this subsection if it is given—

(a) where an intermediate diet is to be held, at or before that diet; or

(b) where such a diet is not to be held, no later than 10 clear days before the trial diet,

together with the particulars mentioned in subsection (6) below.

(6) The particulars are—

(a) in relation to a defence of alibi, particulars as to time and place; and

(b) in relation to that or any other defence, particulars of the witnesses who may be called to give evidence in support of the defence.

(7) Where notice of a defence to which subsection (1) above applies is given to the prosecutor, the prosecutor is entitled to an adjournment of the case.

(8) The entitlement to an adjournment under subsection (7) above may be exercised whether or not—

(a) the notice was given in accordance with subsection (5) above;

(b) the entitlement could have been exercised at an earlier diet.**]**

Textual Amendments

F146 S. 149B substituted (10.12.2007) for ss. 149, 149A by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 19**, 84; S.S.I. 2007/479, art. 3(1) , Sch. (subject to art. 7) (as amended by S.S.I. 2007/527)

Failure of accused to appear

150 Failure of accused to appear.

(1) This section applies 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 other than a diet which, by virtue of section 148(5) of this Act, he is not required to attend.

(2) The court may adjourn the proceedings to another diet, and order the accused to attend at such diet, and appoint intimation of the diet to be made to him.

(3) The court may grant warrant to apprehend the accused.

[F147(3A) The grant, under subsection (3) above, at an intermediate diet of a warrant to apprehend the accused has the effect of discharging the trial diet as respects that accused.

(3B) Subsection (3A) above is subject to any order to different effect made by the court when granting the warrant.**]**

(4) Intimation under subsection (2) above shall be sufficiently given by an officer of law, or by letter signed by the clerk of court or 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 acknowledgement or certificate of the delivery of the letter issued by the Post Office shall be sufficient evidence of such intimation having been duly given.

(5) Where the accused is charged with a 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, on the motion of the prosecutor and upon being satisfied that the accused has been duly cited, or has received due intimation of the diet where such intimation has been ordered, may subject to subsections (6) and (7) below, proceed to hear and dispose of the case in the absence of the accused.

(6) Unless the statute founded on authorises conviction in default of appearance, proof of the complaint must be led to the satisfaction of the court.

(7) In a case to which subsection (5) above applies, the court may, if it considers it expedient, allow counsel or a solicitor who satisfies the court that he has authority from the accused so to do, to appear and plead for and defend him.

(8) An accused who without reasonable excuse fails to attend any diet of which he has been given due notice, shall be guilty of an offence and liable on summary conviction—

(a) to a fine not exceeding level 3 on the standard scale; and

(b) to a period of imprisonment not exceeding—

(i) in the district court, 60 days; or

(ii) in the sheriff court, 3 months.

(9) The penalties provided for in subsection (8) above may be imposed in addition to any other penalty which it is competent for the court to impose, notwithstanding that the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.

(10) An accused may be dealt with for an offence under subsection (8) above either at his diet of trial for the original offence or at a separate trial.

Textual Amendments

F147 S. 150(3A)(3B) inserted (retrospectively) by Criminal Procedure (Amendment) (Scotland) Act 2002 (asp 4), **s. 1(1)(2)** (with s. 1(4))

VALID FROM 10/12/2007

[F148 150A Proceedings in absence of accused

(1) Where the accused does not appear at a diet (apart from a diet fixed for the first calling of the case), the court—

(a) on the motion of the prosecutor or, in relation to sentencing, of its own accord; and

(b) if satisfied as to the matters specified in subsection (2) below,

may proceed to hear and dispose of the case in the absence of the accused in like manner as if the accused were present.

(2) The matters referred in subsection (1)(b) above are—

(a) that citation of the accused has been effected or the accused has received other intimation of the diet; and

(b) that it is in the interests of justice to proceed as mentioned in subsection (1) above.

(3) In subsection (1) above, the reference to proceeding to hear and dispose of the case includes, in relation to a trial diet, proceeding with the trial.

(4) Where the court is considering whether to proceed in pursuance of subsection (1) above, it shall—

(a) if satisfied that there is a solicitor with authority to act—

(i) for the purposes of representing the accused's interests at the hearing on whether to proceed that way; and

(ii) if it proceeds that way, for the purposes of representing the accused's further interests at the diet (including, in relation to a trial diet, presenting a defence at the trial),

allow that solicitor to act for those purposes; or

(b) if there is no such solicitor, at its own hand appoint a solicitor to act for those purposes if it considers that it is in the interests of justice to do so.

(5) It is the duty of a solicitor appointed under subsection (4)(b) above to act in the best interests of the accused.

(6) In all other respects, a solicitor so appointed has, and may be made subject to, the same obligations and has, and may be given, the same authority as if engaged by the accused; and any employment of and instructions given to counsel by the solicitor shall proceed and be treated accordingly.

(7) Where the court is satisfied that—

(a) a solicitor allowed to act under subsection (4)(a) above no longer has authority to act; or

(b) a solicitor appointed under subsection (4)(b) above is no longer able to act in the best interests of the accused,

the court may relieve that solicitor and appoint another solicitor for the purposes referred to in subsection (4) above.

(8) Subsections (4)(b) and (7) above do not apply in the case of proceedings—

(a) in respect of a sexual offence to which section 288C of this Act applies;

(b) in respect of which section 288E of this Act applies; or

(c) in which an order has been made under section 288F(2) of this Act.

(9) Reference in this section to a solicitor appointed under subsection (4)(b) above includes reference to a solicitor appointed under subsection (7) above.

(10) Where the court proceeds in pursuance of subsection (1) above, it shall not in the absence of the accused pronounce a sentence of imprisonment or detention.

(11) Nothing in this section prevents—

(a) a warrant being granted at any stage of proceedings for the apprehension of the accused;

(b) a case subsequently being adjourned (in particular, with a view to having the accused present at any proceedings).]

Textual Amendments

F148 S. 150A inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 14(4)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S. I. 2007/527)

Non-availability of judge

151 Death, illness or absence of judge.

(1) Where the court is unable to proceed owing to the death, illness or absence of the presiding judge, it shall be lawful for the clerk of court—

(a) where the diet has not been called, to convene the court and adjourn the diet;

(b) where the diet has been called but no evidence has been led, to adjourn the diet; and

(c) where the diet has been called and evidence has been led—

(i) with the agreement of the parties, to desert the diet *pro loco et tempore*; or

(ii) to adjourn the diet.

(2) Where, under subsection (1)(c)(i) above, a diet has been deserted *pro loco et tempore*, any new prosecution charging the accused with the same or any similar offence arising out of the same facts shall be brought within two months of the date on which the diet was deserted notwithstanding that any other time limit for the commencement of such prosecution has elapsed.

(3) For the purposes of subsection (2) above, a new prosecution shall be deemed to commence on the date on which a warrant to apprehend or to cite the accused is granted, if such warrant is executed without undue delay.

Trial diet

152 Desertion of diet.

(1) It shall be competent at the diet of trial, at any time before the first witness is sworn, for the court, on the application of the prosecutor, to desert the diet *pro loco et tempore.*

(2) If, at a diet of trial, the court refuses an application by the prosecutor to adjourn the trial or to desert the diet*pro loco et tempore*, and the prosecutor is unable or unwilling to proceed with the trial, the court shall desert the diet *simpliciter*.

(3) Where the court has deserted a diet *simpliciter* under subsection (2) above (and the court's decision in that regard has not been reversed on appeal), it shall not be competent for the prosecutor to raise a fresh libel.

VALID FROM 10/12/2007

[F149 152A Complaints triable together

(1) Where—

(a) two or more complaints against an accused call for trial in the same court on the same day; and

(b) they each contain one or more charges to which the accused pleads not guilty,

the prosecutor may apply to the court for those charges to be tried together at that diet despite the fact that they are not all contained in the one complaint.

(2) On an application under subsection (1) above, the court is to try those charges together if it appears to the court that it is expedient to do so.

(3) For the purposes of subsections (1) and (2) above, any other charges contained in the complaints are (without prejudice to further proceedings as respects those other charges) to be disregarded.

(4) Where charges are tried together under this section, they are to be treated (including, in particular, for the purposes of and in connection with the leading of evidence, proof and verdict) as if they were contained in one complaint.

(5) But the complaints mentioned in subsection (1)(a) above are, for the purposes of further proceedings (including as to sentence), to be treated as separate complaints.**]**

Textual Amendments

F149 S. 152A inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 13**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S. I. 2007/527)

153 Trial in presence of accused.

(1) Without prejudice to section 150 of this Act, and subject to subsection (2) below, no part of a trial shall take place outwith the presence of the accused.

(2) If during the course of his trial an accused so misconducts himself that in the view of the court a proper trial cannot take place unless he is removed, the court may order—

(a) that he is removed from the court for so long as his conduct makes it necessary; and

(b) that the trial proceeds in his absence,

but if he is not legally represented the court shall appoint counsel or a solicitor to represent his interests during such absence.

F150154 . . . . . .

Textual Amendments

F150 S. 154 repealed (1.8.1997) by 1997 c. 48, ss. 28(1), 62(2), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

155 Punishment of witness for contempt.

(1) If a witness in a summary prosecution—

(a) wilfully fails to attend after being duly cited; or

(b) unlawfully refuses to be sworn; or

(c) after the oath has been administered to him refuses to answer any question which the court may allow; or

(d) prevaricates 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 level 3 on the standard scale or by imprisonment for any period not exceeding 21 days.

(2) Where punishment is summarily imposed as mentioned in subsection (1) above, the clerk of court shall enter in the record of the proceedings the acts constituting the contempt or the statements forming the prevarication.

(3) Subsections (1) and (2) above are without prejudice to the right of the prosecutor to proceed by way of formal complaint for any such contempt where a summary punishment, as mentioned in the said subsection (1), is not imposed.

(4) Any witness who, having been duly cited in accordance with section 140 of this Act—

(a) fails without reasonable excuse, after receiving at least 48 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 subsection (1) above.

156 Apprehension of witness.

(1) Where a witness, having been duly cited, fails to appear at the diet fixed for his attendance and no just excuse is offered by him or on his behalf, the court may, if it is satisfied that he received the citation or that its contents came to his knowledge, issue a warrant for his apprehension.

(2) Where the court is satisfied by evidence on oath that a witness is not likely to attend to give evidence without being compelled so to do, it may issue a warrant for his apprehension.

(3) A warrant of apprehension of a witness in the form mentioned in section 135(1) of this Act shall imply warrant to officers of law to search for and apprehend the witness, and to detain him in a police station, police cell, or other convenient place, until—

(a) the date fixed for the hearing of the case; or

(b) the date when security to the amount fixed under subsection (4) below is found,

whichever is the earlier.

(4) A witness apprehended under a warrant under subsection (1) or (2) above shall, wherever practicable, be brought immediately by the officer of law who executed that warrant before a justice, who shall fix such sum as he considers appropriate as security for the appearance of the witness at all diets.

Modifications etc. (not altering text)

C56 S. 156 applied (26.4.2004) by Crime (International Co-operation) Act 2003 (c. 32), ss. 15, 30, 31, 94, **Sch. 1 para. 2**, **Sch. 2 para. 2**; S.I. 2004/786, **art. 3**

VALID FROM 10/03/2008

[F151 156A Orders in respect of witnesses apprehended under section 156

(1) Where a witness is brought before the court in pursuance of a warrant issued under section 156 of this Act, the court shall, after giving the parties and the witness an opportunity to be heard, make an order—

(a) detaining the witness until the conclusion of the diet at which the witness is to give evidence;

(b) releasing the witness on bail; or

(c) liberating the witness.

(2) The court may make an order under subsection (1)(a) or (b) above only if it is satisfied that—

(a) the order is necessary with a view to securing that the witness appears at the diet at which the witness is to give evidence; and

(b) it is appropriate in all the circumstances to make the order.

(3) Whenever the court makes an order under subsection (1) above, it shall state the reasons for the terms of the order.

(4) Subsection (1) above is without prejudice to any power of the court to—

(a) make a finding of contempt of court in respect of any failure of a witness to appear at a diet to which he has been duly cited; and

(b) dispose of the case accordingly.

(5) Where—

(a) an order under subsection (1)(a) above has been made in respect of a witness; and

(b) at, but before the conclusion of, the diet at which the witness is to give evidence, the court in which the diet is being held excuses the witness,

that court, on excusing the witness, may recall the order under subsection (1)(a) above and liberate the witness.

(6) On making an order under subsection (1)(b) above in respect of a witness, the court shall impose such conditions as it considers necessary with a view to securing that the witness appears at the diet at which he is to give evidence.

(7) However, the court may not impose as such a condition a requirement that the witness or a cautioner on his behalf deposit a sum of money in court.

(8) Section 25 of this Act shall apply in relation to an order under subsection (1)(b) above as it applies to an order granting bail, but with the following modifications—

(a) references to the accused shall be read as if they were references to the witness in respect of whom the order under subsection (1)(b) above is made;

(b) references to the order granting bail shall be read as if they were references to the order under subsection (1)(b) above;

(c) subsection (3) shall be read as if for the words from "relating" to "offence" in the third place where it occurs there were substituted " at which the witness is to give evidence ".**]**

Textual Amendments

F151 Ss. 156-156D substituted (10.3.2008) for s. 156 by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 16**, 84; S.S.I. 2008/42, **art. 3**, Sch.

VALID FROM 10/03/2008

[F152156B Breach of bail under section 156A(1)(b)

(1) A witness who, having been released on bail by virtue of an order under subsection (1)(b) of section 156A of this Act, fails without reasonable excuse—

(a) to appear at any diet to which he has been cited; or

(b) to comply with any condition imposed under subsection (6) of that section,

shall be guilty of an offence and liable on summary conviction to the penalties specified in subsection (2) below.

(2) Those penalties are—

(a) a fine not exceeding level 3 on the standard scale; and

(b) imprisonment for a period—

(i) where conviction is in the JP court, not exceeding 60 days;

(ii) where conviction is in the sheriff court, not exceeding 12 months.

(3) In any proceedings in relation to an offence under subsection (1) above, the fact that (as the case may be) a person—

(a) was on bail;

(b) was subject to any particular condition of bail;

(c) failed to appear at a diet;

(d) was cited to a diet,

shall, unless challenged by preliminary objection before his plea is recorded, be held as admitted.

(4) Section 28 of this Act shall apply in respect of a witness who has been released on bail by virtue of an order under section 156A(1)(b) of this Act as it applies to an accused released on bail, but with the following modifications—

(a) references to an accused shall be read as if they were references to the witness;

(b) in subsection (2), the reference to the court to which the accused's application for bail was first made shall be read as if it were a reference to the court which made the order under section 156A(1)(b) of this Act in respect of the witness;

(c) in subsection (4)—

(i) references to the order granting bail and original order granting bail shall be read as if they were references to the order under section 156A(1)(b) of this Act and the original such order respectively;

(ii) paragraph (a) shall be read as if at the end there were inserted " and make an order under section 156A(1)(a) or (c) of this Act in respect of the witness ";

(iii) paragraph (c) shall be read as if for the words from "complies" to the end there were substituted " appears at the diet at which the witness is to give evidence ".**]**

Textual Amendments

F152 Ss. 156-156D substituted (10.3.2008) for s. 156 by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 16**, 84; S.S.I. 2008/42, **art. 3**, Sch.

Modifications etc. (not altering text)

C57 S. 156B(2)(b)(i) applied (10.12.2007) by The District Courts and Justices of the Peace (Scotland) Order 2007 (S.S.I. 2007/480), **art. 4(1)(c)**

VALID FROM 10/03/2008

[F153156C Review of orders under section 156A(1)(a) or (b)

(1) Where a court has made an order under subsection (1)(a) of section 156A of this Act, the court may, on the application of the witness in respect of whom the order was made and after giving the parties and the witness an opportunity to be heard—

(a) recall the order; and

(b) make an order under subsection (1)(b) or (c) of that section in respect of the witness.

(2) Where a court has made an order under subsection (1)(b) of section 156A of this Act, the court may, after giving the parties and the witness an opportunity to be heard—

(a) on the application of the witness in respect of whom the order was made—

(i) review the conditions imposed under subsection (6) of that section at the time the order was made; and

(ii) make a new order under subsection (1)(b) of that section and impose different conditions under subsection (6) of that section;

(b) on the application of the party who made the application under section 156(1) of this Act in respect of the witness, review the order and the conditions

imposed under subsection (6) of section 156A of this Act at the time the order was made, and—

(i) recall the order and make an order under subsection (1)(a) of that section in respect of the witness; or

(ii) make a new order under subsection (1)(b) of that section and impose different conditions under subsection (6) of that section.

(3) The court may not review an order by virtue of subsection (1) or (2) above unless—

(a) in the case of an application by the witness, the circumstances of the witness have changed materially; or

(b) in that or any other case, the witness or party making the application puts before the court material information which was not available to it when it made the order which is the subject of the application.

(4) An application under this section by a witness—

(a) where it relates to the first order made under section 156A(1)(a) or (b) of this Act in respect of the witness, shall not be made before the fifth day after that order is made;

(b) where it relates to any subsequent such order, shall not be made before the fifteenth day after the order is made.

(5) On receipt of an application under subsection (2)(b) above the court shall—

(a) intimate the application to the witness in respect of whom the order which is the subject of the application was made;

(b) fix a diet for hearing the application and cite the witness to attend the diet; and

(c) where it considers that the interests of justice so require, grant warrant to arrest the witness.

(6) Nothing in this section shall affect any right of a person to appeal against an order under section 156A(1).**]**

Textual Amendments

F153 Ss. 156-156D substituted (10.3.2008) for s. 156 by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 16**, 84; S.S.I. 2008/42, **art. 3**, Sch.

VALID FROM 10/03/2008

[F154156DAppeals in respect of orders under section 156A(1)

(1) Any of the parties specified in subsection (2) below may appeal to the High Court against—

(a) any order made under subsection (1)(a) or (c) of section 156A of this Act;

(b) where an order is made under subsection (1)(b) of that section—

(i) the order;

(ii) any of the conditions imposed under subsection (6) of that section on the making of the order; or

(iii) both the order and any such conditions.

(2) The parties referred to in subsection (1) above are—

(a) the witness in respect of whom the order which is the subject of the appeal was made;

(b) the prosecutor; and

(c) the accused.

(3) A party making an appeal under subsection (1) above shall intimate it to the other parties specified in subsection (2) above; and, for that purpose, intimation to the Crown Agent shall be sufficient intimation to the prosecutor.

(4) 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 enquiry and hearing of the parties as shall seem just.

(5) Where the witness in respect of whom the order which is the subject of an appeal under this section was made is under 21 years of age, section 51 of this Act shall apply to the High Court or, as the case may be, the Lord Commissioner of Justiciary when disposing of the appeal as it applies to a court when remanding or committing a person of the witness's age for trial and sentence.**]**

Textual Amendments

F154 Ss. 156-156D substituted (10.3.2008) for s. 156 by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 16**, 84; S.S.I. 2008/42, **art. 3**, Sch.

157 Record of proceedings.

(1) Proceedings in a summary prosecution shall be conducted summarily *viva voce* and, except where otherwise provided and subject to subsection (2) below, no record need be kept of the proceedings other than the complaint, or a copy of the complaint certified as a true copy by the procurator fiscal, the plea, a note of any documentary evidence produced, and the conviction and sentence or other finding of the court.

(2) Any objection 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.

158 Interruption of summary proceedings for verdict in earlier trial.

Where the sheriff is sitting in summary proceedings during the period in which the jury in a 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,

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.

159 Amendment of complaint.

(1) It shall be competent at any time prior to the determination of the case, unless the court see just cause to the contrary, to amend the complaint or any notice of previous conviction relative thereto by deletion, alteration or addition, so as to—

(a) cure any error or defect in it;

(b) meet any objection to it; or

(c) 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 it appears to the court 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 appears to the court to be just.

(3) An amendment made under this section shall be sufficiently authenticated by the initials of the clerk of the court.

160 No case to answer.

(1) Immediately after the close of the evidence for the prosecution, the accused may intimate to the court his desire to make a submission that he has no case to answer both—

(a) on an offence charged in the complaint; and

(b) on any other offence of which he could be convicted under the complaint were the offence charged the only offence so charged.

(2) If, after hearing both parties, the judge is satisfied that the evidence led by the prosecution is insufficient in law to justify the accused being convicted of the offence charged in respect of which the submission has been made or of such other offence as is mentioned, in relation to that offence, in paragraph (b) of subsection (1) above, he shall acquit him of the offence charged in respect of which the submission has been made and the trial shall proceed only in respect of any other offence charged in the complaint.

(3) If, after hearing both parties, the judge is not satisfied as is mentioned in subsection (2) above, he shall reject the submission and the trial shall proceed, with the accused entitled to give evidence and call witnesses, as if such submission had not been made.

161 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.

Verdict and conviction

162 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.

163 Conviction: miscellaneous provisions.

(1) Where imprisonment is authorised by the sentence of a court of summary jurisdiction, an extract of the finding and sentence in the form prescribed by Act of Adjournal 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.

(2) 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, and it shall not be necessary that the judge so signing shall be one of the judges trying or dealing with the case otherwise.

164 Conviction of part 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.

165 "Conviction" and "sentence" not to be used for children.

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.

166 Previous convictions: summary proceedings

(1) This section shall apply 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.

(2) A notice in the form prescribed by Act of Adjournal or as nearly as may be in such form specifying 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.

(3) The previous conviction shall not be laid before the judge until he is satisfied that the charge is proved.

(4) 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 subsection (2) above before the judge, and—

(a) in a case where the plea of guilty is tendered in writing the accused shall be deemed to admit any previous conviction set forth in the notice, unless he expressly denies it in the writing by which the plea is tendered;

(b) in any other case the judge or the clerk of court shall ask the accused whether he admits the previous conviction,

and if such admission is made or deemed to be made it shall be entered in the record of the proceedings; and it shall not be necessary for the prosecutor to produce extracts of any previous convictions so admitted.

(5) Where the accused does not admit any previous conviction, the prosecutor unless he withdraws the conviction shall adduce evidence in proof thereof either then or at any other diet.

(6) A copy of any notice served on the accused under this section shall be entered in the record of the proceedings.

(7) 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.

(8) Nothing in this section shall prevent the prosecutor—

(a) asking the accused questions tending to show that the accused has been convicted of an offence other than that with which he is charged, where he is entitled to do so under section 266 of this Act; or

(b) leading evidence of previous convictions where it is competent to do so—

(i) as evidence in support of a substantive charge; or

(ii) under section 270 of this Act.

VALID FROM 10/03/2008

[F155 166A Post-offence convictions

Where a person is convicted of an offence on summary complaint, the court may, in deciding on the disposal of the case, have regard to any convictions which—

(a) were imposed on the person between the date of the offence and the date of conviction in respect of the offence;

(b) are specified in a notice laid before the court by the prosecutor; and

(c) are—

(i) admitted by the person; or

(ii) proved by the prosecutor on evidence adduced then or at another diet.**]**

Textual Amendments

F155 S. 166A inserted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) , **ss. 12(2)** , 84 ; S.S.I. 2008/42 , **art. 3** , Sch. (subject to art. 5)

VALID FROM 10/12/2007

[F156 166B Charges which disclose convictions

(1) Nothing in section 166 of this Act prevents—

(a) the prosecutor leading evidence of previous convictions where it is competent to do so as evidence in support of a substantive charge;

(b) the prosecutor proceeding with a charge—

(i) which discloses a previous conviction; or

(ii) in support of which evidence of a previous conviction may competently be led,

on a complaint which includes a charge in relation to which the conviction is irrelevant; or

(c) the court trying a charge—

(i) which discloses a previous conviction; or

(ii) in support of which evidence of a previous conviction may competently be led,

together with a charge on another complaint in relation to which the conviction is irrelevant.

(2) But subsections (1)(b) and (c) above apply only if the charges are of offences which—

(a) relate to the same occasion; or

(b) are of a similar character and amount to (or form part of) a course of conduct.

(3) The reference in subsection (1)(c) above to trying a charge together with a charge on another complaint means doing so under section 152A of this Act.**]**

Textual Amendments

F156 S. 166B inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) , **ss. 12(2)** , 84 ; S.S.I. 2007/479 , **art. 3(1)** , Sch. (as amended by S.S.I. 2007/527)

167 Forms of finding and sentence.

(1) 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.

(2) The finding and sentence and any order of a court of summary jurisdiction, as regards both offences at common law and offences under any enactment, shall be entered in the record of the proceedings in the form, as nearly as may be, prescribed by Act of Adjournal.

(3) The record of the proceedings shall be sufficient warrant for all execution on a finding, sentence or order and for the clerk of court to issue extracts containing such executive clauses as may be necessary for implement thereof.

(4) When imprisonment forms part of any sentence or other judgement, warrant for the apprehension and interim detention of the accused pending his being committed to prison shall, where necessary, be implied.

(5) 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.

(6) Where several charges at common law or under any enactment are embraced in one complaint, a cumulo penalty may be imposed in respect of all or any of such charges of which the accused is convicted.

(7) A court of summary jurisdiction may frame—

(a) a sentence following on conviction; or

(b) an order for committal in default of payment of any sum of money or for contempt of court,

so as to take effect on the expiry of any previous sentence or order which, at the date of the later conviction or order, the accused is undergoing.

(8) 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, and—

(a) 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; and

(b) the power conferred by this subsection to alter or modify a sentence may be exercised without requiring the attendance of the accused.

168 Caution.

(1) This section applies with regard to the finding, forfeiture, and recovery of caution in any proceedings under this Part of this Act.

(2) Caution may be found by consignation of the amount with the clerk of court, or by bond of caution signed by the cautioner.

(3) 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 of the caution.

(4) Where a cautioner fails to pay the amount due under his bond within six days after he has received a charge to that effect, the court may—

(a) order him to be imprisoned for the maximum period applicable in pursuance of section 219 of this Act to that amount or until payment is made; or

(b) if it considers it expedient, on the application of the cautioner grant time for payment; or

(c) instead of ordering imprisonment, order recovery by civil diligence in accordance with section 221 of this Act.

169 Detention in precincts of court.

(1) Where a court of summary jurisdiction has power to impose imprisonment or detention on an offender it may, in lieu of so doing and subject to subsection (2) below, 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.

(2) 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.

Miscellaneous

170 Damages in respect of summary proceedings.

(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 in any summary proceedings under this Act, unless—

(a) the person suing has suffered imprisonment in consequence thereof; and

(b) such proceedings, act, judgment, decree or sentence has been quashed; and

(c) the person suing specifically avers and proves that such proceeding, act, judgment, decree or sentence was taken, done or pronounced maliciously and without probable cause.

(2) No such liability as aforesaid shall be incurred or found where such judge, clerk of court or prosecutor establishes 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.

171 Recovery of penalties.

(1) All penalties, for the recovery of which no special provision has been made by any enactment 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.

172 Forms of procedure.

(1) The forms of procedure for the purposes of summary proceedings under this Act and appeals therefrom shall be in such forms as are prescribed by Act of Adjournal or as nearly as may be in such forms.

(2) All warrants (other than warrants of apprehension or search), 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, preliminary to any procedure, a statement on oath is required, the statement may be given before any judge, whether the subsequent procedure is in his court or another court.

PART X

APPEALS FROM SUMMARY PROCEEDINGS

Modifications etc. (not altering text)
C58 Pt. X (ss. 173-194) excluded (19.2.2001) by 2000 c. 11, **ss. 7(7)**, 8(1)(f)(ii); S.I. 2001/421, **art. 2**
C59 Pt. 10 extended (11.3.2005) by Prevention of Terrorism Act 2005 (c. 2), **s. 12(6)(e)**

General

173 Quorum of High Court in relation to appeals.

(1) For the purpose of hearing and determining any appeal under this Part of this Act, or any proceeding connected therewith, three of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and the determination of any question under this Part of this Act by the court shall be according to the votes of the majority of the members of the court sitting, including the presiding judge, and each judge so sitting shall be entitled to pronounce a separate opinion.

(2) For the purpose of hearing and determining appeals under section 175(2)(b) or (c) of this Act, or any proceeding connected therewith, two of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and each judge shall be entitled to pronounce a separate opinion; but where the two Lords Commissioners of Justiciary are unable to reach agreement on the disposal of the appeal, or where they consider it appropriate, the appeal shall be heard and determined in accordance with subsection (1) above.

174 Appeals relating to preliminary pleas.

(1) Without prejudice to any right of appeal under section 175(1) to (6) or 191 of this Act, a party may, with the leave of the court (granted either on the motion of the party or *ex proprio motu*) and in accordance with such procedure as may be prescribed by Act of Adjournal, appeal to the High Court against a decision of the court of first instance (other than a decision not to grant leave under this subsection) which relates to such objection or denial as is mentioned in section 144(4) of this Act; but such appeal must be taken not later than two days after such decision.

(2) Where an appeal is taken under subsection (1) above, the High Court may postpone the trial diet (if one has been fixed) for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.

(3) If leave to appeal under subsection (1) above is granted by the court it shall not proceed to trial at once under subsection (2) of section 146 of this Act; and subsection (3) of that section shall be construed as requiring sufficient time to be allowed for the appeal to be taken.

(4) In disposing of an appeal under subsection (1) above the High Court may affirm the decision of the court of first instance or may remit the case to it with such directions in the matter as it thinks fit; and where the court of first instance had dismissed the complaint, or any part of it, may reverse that decision and direct that the court of

first instance fix a trial diet (if it has not already fixed one as regards so much of the complaint as it has not dismissed.)

175 Right of appeal.

(1) This section is without prejudice to any right of appeal under section 191 of this Act.

(2) Any person convicted, or found to have committed an offence, in summary proceedings may, with leave granted in accordance with section 180 or, as the case may be, 187 of this Act, appeal under this section to the High Court—

(a) against such conviction, or finding;

(b) against the sentence passed on such conviction;

(c) against his absolute discharge or admonition or any probation order or any community service order or any order deferring sentence; or

[[F157](ca) against any decision to remit made under section 49(1)(a) or (7)(b) of this Act;**]**

(d) against both such conviction and such sentence or disposal or order.

(3) The prosecutor in summary proceedings may appeal under this section to the High Court on a point of law—

(a) against an acquittal in such proceedings; or

(b) against a sentence passed on conviction in such proceedings.

[[F158](4) The prosecutor in summary proceedings, in any class of case specified by order made by the Secretary of State, may, in accordance with subsection (4A) below, appeal to the High Court against any of the following disposals, namely—

(a) a sentence passed on conviction;

(b) a decision under section 209(1)(b) of this Act not to make a supervised release order;

(c) a decision under section 234A(2) of this Act not to make a non-harassment order;

(d) a probation order;

(e) a community service order;

(f) a decision to remit to the Principal Reporter made under section 49(1)(a) or (7)(b) of this Act;

(g) an order deferring sentence;

(h) an admonition; or

(i) an absolute discharge.

(4A) An appeal under subsection (4) above may be made—

(a) on a point of law;

(b) where it appears to the Lord Advocate, in relation to an appeal under—

(i) paragraph (a), (h) or (i) of that subsection, that the disposal was unduly lenient;

(ii) paragraph (b) or (c) of that subsection, that the decision not to make the order in question was inappropriate;

(iii) paragraph (d) or (e) of that subsection, that the making of the order concerned was unduly lenient or was on unduly lenient terms;

(iv) under paragraph (f) of that subsection, that the decision to remit was inappropriate;

(v) under paragraph (g) of that subsection, that the deferment of sentence was inappropriate or was on unduly lenient conditions.**]**

[[F159](5) By an appeal under subsection (2) above, an appellant may bring under review of the High Court any alleged miscarriage of justice which may include such a miscarriage based, subject to subsections (5A) to (5D) below, on the existence and significance of evidence which was not heard at the original proceedings.

(5A) Evidence which was not heard at the original proceedings may found an appeal only where there is a reasonable explanation of why it was not so heard.

(5B) Where the explanation referred to in subsection (5A) above or, as the case may be, (5C) below is that the evidence was not admissible at the time of the original proceedings, but is admissible at the time of the appeal, the court may admit that evidence if it appears to the court that it would be in the interests of justice to do so.

(5C) Without prejudice to subsection (5A) above, where evidence such as is mentioned in paragraph (a) of subsection (5) above is evidence—

(a) which is—

(i) from a person; or

(ii) of a statement (within the meaning of section 259(1) of this Act) by a person,

who gave evidence at the original proceedings; and

(b) which is different from, or additional to, the evidence so given,

it may not found an appeal unless there is a reasonable explanation as to why the evidence now sought to be adduced was not given by that person at those proceedings, which explanation is itself supported by independent evidence.

(5D) For the purposes of subsection (5C) above, "independent evidence" means evidence which—

(a) was not heard at the original proceedings;

(b) is from a source independent of the person referred to in subsection (5C) above; and

(c) is accepted by the court as being credible and reliable.

(5E) By an appeal against acquittal under subsection (3) above a prosecutor may bring under review of the High Court any alleged miscarriage of justice.**]**

(6) The power of the Secretary of State to make an order under subsection (4) 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.

(7) Where a person desires to appeal under subsection (2)(a) or (d) or (3) above, he shall pursue such appeal in accordance with sections 176 to 179, 181 to 185, 188, 190 and 192(1) and (2) of this Act.

(8) A person who has appealed against both conviction and sentence, may abandon the appeal in so far as it is against conviction and may proceed with it against sentence alone, subject to such procedure as may be prescribed by Act of Adjournal.

(9) Where a convicted person or as the case may be a person found to have committed an offence desires to appeal under subsection (2)(b) or (c) above, or the prosecutor desires so to appeal by virtue of subsection (4) above, he shall pursue such appeal in accordance with sections 186, 189(1) to (6), 190 and 192(1) and (2) of this Act; but

nothing in this section shall prejudice any right to proceed by bill of suspension, or as the case may be advocation, against an alleged fundamental irregularity relating to the imposition of sentence.

(10) Where any statute provides for an appeal from summary proceedings to be taken under any public general or local enactment, such appeal shall be taken under this Part of this Act.

Textual Amendments

F157 S. 175(2)(ca) inserted (1.8.1997) by 1997 c. 48, **s. 23(c)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F158 S. 175(4)(4A) substituted (1.8.1997) for s. 175(4) by 1997 c. 48, **s. 21(2)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F159 S. 175(5)-(5E) substituted (1.8.1997) for s. 175(5) by 1997 c. 48, **s. 17(2)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

Stated case

176 Stated case: manner and time of appeal.

(1) An appeal under section 175(2)(a) or (d) or (3) of this Act shall be by application for a stated case, which application shall—

(a) be made within one week of the final determination of the proceedings;

(b) contain a full statement of all the matters which the appellant desires to bring under review and, where the appeal is also against sentence or disposal or order, the ground of appeal against that sentence or disposal or order; and

(c) be signed by the appellant or his solicitor and lodged with the clerk of court,

and a copy of the application shall, within the period mentioned in paragraph (a) above, be sent by the appellant to the respondent or the respondent's solicitor.

(2) The clerk of court shall enter in the record of the proceedings the date when an application under subsection (1) above was lodged.

(3) The appellant may, at any time within the period of three weeks mentioned in subsection (1) of section 179 of this Act, or within any further period afforded him by virtue of section 181(1) of this Act, amend any matter stated in his application or add a new matter; and he shall intimate any such amendment, or addition, to the respondent or the respondent's solicitor.

(4) 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.

(5) The record of the procedure in the inferior court in an appeal mentioned in subsection (1) above shall be as nearly as may be in the form prescribed by Act of Adjournal.

Modifications etc. (not altering text)

C60 S. 176(1) modified (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), **ss. 100(8)**, 458; S.S.I. 2003/210, **art. 2(1)(a)** (subject to transitional provisions and savings in arts. 3-7)

177 Procedure where appellant in custody.

(1) If an appellant making an application under section 176 of this Act is in custody, the court of first instance may—

(a) grant bail;

(b) grant a sist of execution;

(c) make any other interim order.

(2) An application for bail shall be disposed of by the court within 24 hours after such application has been made.

(3) If bail is refused or the appellant is dissatisfied with the conditions imposed, he may, within 24 hours after the judgment of the court, appeal against it 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 bail on such conditions as the Court or judge may think fit, or to refuse bail.

(4) 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 conditions imposed or on account of refusal of bail by a court of summary jurisdiction.

(5) If an appellant who has been granted bail 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 bail remained unexpired and, subject to subsection (6) below, such period shall run from the date of his imprisonment under the warrant or, on the application of the appellant, such earlier date as the court thinks fit, not being a date later than the date of expiry of any term or terms of imprisonment imposed subsequently to the conviction appealed against.

(6) Where an appellant who has been granted bail 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 in custody or 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 any term or terms of imprisonment subsequently imposed expired.

(7) The court shall not make an order under subsection (6) above to the effect that the sentence or, as the case may be, unexpired portion of the sentence shall run other than concurrently with the subsequently imposed term of imprisonment without first notifying the appellant of its intention to do so and considering any representations made by him or on his behalf.

178 Stated case: preparation of draft.

(1) Within three weeks of the final determination of proceedings in respect of which an application for a stated case is made under section 176 of this Act—

(a) where the appeal is taken from the district court and the trial was presided over by a justice of the peace or justices of the peace, the Clerk of Court; or

(b) in any other case the judge who presided at the trial,

shall prepare a draft stated case, and the clerk of the court concerned shall forthwith issue the draft to the appellant or his solicitor and a duplicate thereof to the respondent or his solicitor.

(2) A stated case shall be, as nearly as may be, in the form prescribed by Act of Adjournal, 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.

179 Stated case: adjustment and signature.

(1) Subject to section 181(1) of this Act, within three weeks of the issue of the draft stated case under section 178 of this Act, each party shall cause to be transmitted to the court and to the other parties or their solicitors a note of any adjustments he proposes be made to the draft case or shall intimate that he has no such proposal.

(2) The adjustments mentioned in subsection (1) above shall relate to evidence heard or purported to have been heard at the trial and not to such [F160]. . . evidence as is mentioned in section 175(5) of this Act.

(3) Subject to section 181(1) of this Act, if the period mentioned in subsection (1) above has expired and the appellant has not lodged adjustments and has failed to intimate that he has no adjustments to propose, he shall be deemed to have abandoned his appeal; and subsection (5) of section 177 of this Act shall apply accordingly.

(4) If adjustments are proposed under subsection (1) above or if the judge desires to make any alterations to the draft case there shall, within one week of the expiry of the period mentioned in that subsection or as the case may be of any further period afforded under section 181(1) of this Act, be a hearing (unless the appellant has, or has been deemed to have, abandoned his appeal) for the purpose of considering such adjustments or alterations.

(5) Where a party neither attends nor secures that he is represented at a hearing under subsection (4) above, the hearing shall nevertheless proceed.

(6) Where at a hearing under subsection (4) above—

(a) any adjustment proposed under subsection (1) above by a party (and not withdrawn) is rejected by the judge; or

(b) any alteration proposed by the judge is not accepted by all the parties,

that fact shall be recorded in the minute of the proceedings of the hearing.

(7) Within two weeks of the date of the hearing under subsection (4) above or, where there is no hearing, within two weeks of the expiry of the period mentioned in subsection (1) above, the judge shall (unless the appellant has been deemed to have abandoned the appeal) state and sign the case and shall append to the case—

(a) any adjustment, proposed under subsection (1) above, which is rejected by him, a note of any evidence rejected by him which is alleged to support that

adjustment and the reasons for his rejection of that adjustment and evidence; and

(b) a note of the evidence upon which he bases any finding of fact challenged, on the basis that it is unsupported by the evidence, by a party at the hearing under subsection (4) above.

(8) As soon as the case is signed under subsection (7) above the clerk of court—

(a) shall send the case to the appellant or his solicitor and a duplicate thereof to the respondent or his solicitor; and

(b) shall transmit the complaint, productions and any other proceedings in the cause to the Clerk of Justiciary.

(9) Subject to section 181(1) of this Act, within one week of receiving the case the appellant or his solicitor, as the case may be, shall cause it to be lodged with the Clerk of Justiciary.

(10) Subject to section 181(1) of this Act, if the appellant or his solicitor fails to comply with subsection (9) above the appellant shall be deemed to have abandoned the appeal; and subsection (5) of section 177 of this Act shall apply accordingly.

Textual Amendments

F160 Word in s. 179(2) repealed (1.8.1997) by 1997 c. 48, s. 62(1)(2), Sch. 1 para. 21(20), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

180 Leave to appeal against conviction etc.

(1) The decision whether to grant leave to appeal for the purposes of section 175(2)(a) or (d) of this Act shall be made by a judge of the High Court who shall—

(a) if he considers that the documents mentioned in subsection (2) below disclose arguable grounds of appeal, grant leave to appeal and make such comments in writing as he considers appropriate; and

(b) in any other case—

(i) refuse leave to appeal and give reasons in writing for the refusal; and

(ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

(2) The documents referred to in subsection (1) above are—

(a) the stated case lodged under subsection (9) of section 179 of this Act; and

(b) the documents transmitted to the Clerk of Justiciary under subsection (8)(b) of that section.

(3) A warrant granted under subsection (1)(b)(ii) above shall not take effect until the expiry of the period of 14 days mentioned in subsection (4) below without an application to the High Court for leave to appeal having been lodged by the appellant under that subsection.

(4) Where leave to appeal is refused under subsection (1) above the appellant may, within 14 days of intimation under subsection (10) below, apply to the High Court for leave to appeal.

(5) In deciding an application under subsection (4) above the High Court shall—

(a) if, after considering the documents mentioned in subsection (2) above and the reasons for the refusal, the court is of the opinion that there are arguable grounds of appeal, grant leave to appeal and make such comments in writing as the court considers appropriate; and

(b) in any other case—

(i) refuse leave to appeal and give reasons in writing for the refusal; and

(ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

(6) The question whether to grant leave to appeal under subsection (1) or (5) above shall be considered and determined in chambers without the parties being present.

(7) Comments in writing made under subsection (1)(a) or (5)(a) above may, without prejudice to the generality of that provision, specify the arguable grounds of appeal (whether or not they are contained in the stated case) on the basis of which leave to appeal is granted.

(8) Where the arguable grounds of appeal are specified by virtue of subsection (7) above it shall not, except by leave of the High Court on cause shown, be competent for the appellant to found any aspect of his appeal on any ground of appeal contained in the stated case but not so specified.

(9) Any application by the appellant for the leave of the High Court under subsection (8) above—

(a) shall be made not less than seven days before the date fixed for the hearing of the appeal; and

(b) shall, not less that seven days before that date, be intimated by the appellant to the Crown Agent.

(10) The Clerk of Justiciary shall forthwith intimate—

(a) a decision under subsection (1) or (5) above; and

(b) in the case of a refusal of leave to appeal, the reasons for the decision,

to the appellant or his solicitor and to the Crown Agent.

181 Stated case: directions by High Court.

(1) 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 subsection (2) below, that the applicant has failed to comply with any of the requirements of—

(a) subsection (1) of section 176 of this Act; or

(b) subsection (1) or (9) of section 179 of this Act,

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.

(2) Any application for a direction under subsection (1) above shall be made in writing to the Clerk of Justiciary and shall state the ground for the application, and, in the case of an application for the purposes of paragraph (a) of subsection (1) above, 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.

(3) The High Court shall dispose of any application under subsection (1) above in like manner as an application to review the decision of an inferior court on a grant of bail, 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.

182 Stated case: 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.

(2) For the avoidance of doubt, where an appellant, in his application under section 176(1) of this Act (or in a duly made amendment or addition to that application), refers to an alleged miscarriage of justice, but in stating a case under section 179(7) of this Act the inferior court is unable to take the allegation into account, the High Court may nevertheless have regard to the allegation at a hearing under subsection (1) above.

(3) Except by leave of the High Court on cause shown, it shall not be competent for an appellant to found any aspect of his appeal on a matter not contained in his application under section 176(1) of this Act (or in a duly made amendment or addition to that application).

(4) Subsection (3) above shall not apply as respects any ground of appeal specified as an arguable ground of appeal by virtue of subsection (7) of section 180 of this Act.

(5) Without prejudice to any existing power of the High Court, that court may in hearing a stated case—

(a) order the production of any document or other thing connected with the proceedings;

(b) hear any [F161]. . .evidence relevant to any alleged miscarriage of justice or order such evidence to be heard by a judge at the High Court or by such other person as it may appoint for that purpose;

(c) take account of any circumstances relevant to the case which were not before the trial judge;

(d) remit to any fit person to enquire and report in regard to any matter or circumstance affecting the appeal;

(e) appoint a person with expert knowledge to act as assessor to the High Court in any case where it appears to the court that such expert knowledge is required for the proper determination of the case;

(f) take account of any matter proposed in any adjustment rejected by the trial judge and of the reasons for such rejection;

(g) take account of any evidence contained in a note of evidence such as is mentioned in section 179(7) of this Act.

(6) The High Court may at the hearing remit the stated case back to the inferior court to be amended and returned.

Textual Amendments

F161 Word in s. 182(5)(b) repealed (1.8.1997) by 1997 c. 48, s. 62(1)(2), Sch. 1 para. 21(21), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4 and 5)

Modifications etc. (not altering text)

C61 S. 182(5)(a)-(e) applied (1.4.1996) by 1984 c. 12, **s. 81(8)** (as substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 48(3)**)
S. 182(5)(a)-(e) applied (1.7.1997) by S.I. 1997/831, reg. 19(1)-(4), **Sch. 15 para. 5(8)**
S. 182(5)(a)-(e) applied (3.7.2001) by S.I. 2001/1701, reg. 17, **Sch. 13 para. 14(8)**
S. 182(5)(a)-(e) applied (20.11.2002) by Copyright, Designs and Patents Act 1988 (c. 48), ss. 114B(10), 204B(10), 297D(10) (as inserted by Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002 (c. 25), **ss. 3**, **4**, **5**; S.I. 2002/2749, **art. 2**)
S. 182(5)(a)-(e) applied (7.3.2005) by The Electromagnetic Compatibility Regulations 2005 (S.I. 2005/281), **reg. 98(8)**

C62 S. 182(5)(a)-(e) applied (8.4.2000) by S.I. 2000/730, reg. 18, **Sch. 9 para. 4(8)** (which amendment was superseded by S.I. 2003/3144, **reg. 2(10)**)
S. 182(5)(a)-(e) applied (29.12.2003) by S.I. 2000/730, Sch. 9 para. 22(8) (as substituted (29.12.2003) by S.I. 2003/3144, **reg. 2(10)**)
S. 182(5)(a)-(e) applied (20.7.2007) by The Electromagnetic Compatibility Regulations 2006 (S.I. 2006/3418), **reg. 59(8)** (with savings in regs. 7-14, 63, 64)

C63 S. 182(5)(a)-(e) applied (1.12.2008) by The REACH Enforcement Regulations 2008 (S.I. 2008/2852), reg. 9(1), **Sch. 6 Pt. 3 para. 36** (with reg. 19)

C64 S. 182(5)(a)-(e) applied (1.12.2008) by The REACH Enforcement Regulations 2008 (S.I. 2008/2852), reg. 9(1), **Sch. 6 Pt. 3 para. 36** (with reg. 19)

C65 S. 182(5)(a)-(e) applied (1.12.2008) by The REACH Enforcement Regulations 2008 (S.I. 2008/2852), reg. 9(1), **Sch. 6 Pt. 3 para. 36** (with reg. 19)

C66 S. 182(5)(a)-(e) applied (1.12.2008) by The REACH Enforcement Regulations 2008 (S.I. 2008/2852), reg. 9(1), **Sch. 6 Pt. 3 para. 36** (with reg. 19)

C67 S. 182(5)(a)-(e) applied (1.12.2008) by The REACH Enforcement Regulations 2008 (S.I. 2008/2852), reg. 9(1), **Sch. 6 Pt. 3 para. 36** (with reg. 19)

183 Stated case: disposal of appeal.

(1) The High Court may, subject to subsection (3) below and to section 190(1) of this Act, dispose of a stated case by—

(a) remitting the cause to the inferior court with its opinion and any direction thereon;

(b) affirming the verdict of the inferior court;

(c) setting aside the verdict of the inferior court and either quashing the conviction or, subject to subsection (2) below, substituting therefor an amended verdict of guilty; or

(d) setting aside the verdict of the inferior court and granting authority to bring a new prosecution in accordance with section 185 of this Act.

(2) An amended verdict of guilty substituted under subsection (1)(c) above must be one which could have been returned on the complaint before the inferior court.

(3) The High Court shall, in an appeal—

(a) against both conviction and sentence, subject to section 190(1) of this Act, dispose of the appeal against sentence; or

(b) by the prosecutor, against sentence, dispose of the appeal,

by exercise of the power mentioned in section 189(1) of this Act.

(4) In setting aside, under subsection (1) above, a verdict the High Court may quash any sentence imposed on the appellant as respects the complaint, and—

(a) in a case where it substitutes an amended verdict of guilty, whether or not the sentence related to the verdict set aside; or

(b) in any other case, where the sentence did not so relate,

may pass another (but not more severe) sentence in substitution for the sentence so quashed.

(5) For the purposes of subsections (3) and (4) above, "sentence" shall be construed as including disposal or order.

(6) Where an appeal against acquittal is sustained, the High Court may—

(a) convict and, subject to subsection (7) below, sentence the respondent;

(b) remit the case to the inferior court with instructions to convict and sentence the respondent, who shall be bound to attend any diet fixed by the court for such purpose; or

(c) remit the case to the inferior court with their opinion thereon.

(7) Where the High Court sentences the respondent under subsection (6)(a) above it shall not in any case impose a sentence beyond the maximum sentence which could have been passed by the inferior court.

(8) Any reference in subsection (6) above to convicting and sentencing shall be construed as including a reference to—

(a) convicting and making some other disposal; or

(b) convicting and deferring sentence.

(9) The High Court shall have power in an appeal under this Part of this Act to award such expenses both in the High Court and in the inferior court as it may think fit.

(10) Where, following an appeal, other than an appeal under section 175(2)(b) or (3) of this Act, the appellant remains liable to imprisonment or detention under the sentence of the inferior court, or is so liable under a sentence passed in the appeal proceedings the High Court shall have the power where at the time of disposal of the appeal the appellant—

(a) was at liberty on bail, to grant warrant to apprehend and imprison or detain the appellant for a term, to run from the date of such apprehension, not longer than that part of the term or terms of imprisonment or detention specified in the sentence brought under review which remained unexpired at the date of liberation;

(b) is serving a term or terms of imprisonment or detention imposed in relation to a conviction subsequent to the conviction appealed against, to exercise the like powers in regard to him as may be exercised, in relation to an appeal which has been abandoned, by a court of summary jurisdiction in pursuance of section 177(6) of this Act.

184 Abandonment of appeal.

(1) An appellant in an appeal such as is mentioned in section 176(1) 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 or the respondent's solicitor, but such abandonment shall be without prejudice to any other competent mode of appeal, review, advocation or suspension.

(2) Subject to section 191 of this Act, 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.

New prosecution

185 Authorisation of new prosecution.

(1) Subject to subsection (2) below, where authority is granted under section 183(1)(d) of this Act, a new prosecution may be brought charging the accused with the same or any similar offence arising out of the same facts; and the proceedings out of which the stated case arose shall not be a bar to such prosecution.

(2) In a new prosecution under this section the accused shall not be charged with an offence more serious than that of which he was convicted in the earlier proceedings.

(3) No sentence may be passed on conviction under the new prosecution which could not have been passed on conviction under the earlier proceedings.

(4) A new prosecution may be brought under this section, notwithstanding that any time limit (other than the time limit mentioned in subsection (5) below) for the commencement of such proceedings has elapsed.

(5) Proceedings in a prosecution under this section shall be commenced within two months of the date on which authority to bring the prosecution was granted.

(6) In proceedings in a new prosecution under this section it shall, subject to subsection (7) below, be competent for either party to lead any evidence which it was competent for him to lead in the earlier proceedings.

(7) The complaint in a new prosecution under this section shall identify any matters as respects which the prosecutor intends to lead evidence by virtue of subsection (6) above which would not have been competent but for that subsection.

(8) For the purposes of subsection (5) above, proceedings shall be deemed to be commenced—

(a) in a case where such warrant is executed without unreasonable delay, on the date on which a warrant to apprehend or to cite the accused is granted; and

(b) in any other case, on the date on which the warrant is executed.

(9) Where the two months mentioned in subsection (5) above elapse and no new prosecution has been brought under this section, the order under section 183(1)(d) of this Act setting aside the verdict shall have the effect, for all purposes, of an acquittal.

(10) On granting authority under section 183(1)(d) of this Act to bring a new prosecution, the High Court may, after giving the parties an opportunity of being heard, order the detention of the accused person in custody; but an accused person may not be detained by virtue of this subsection for a period of more than 40 days.

Appeals against sentence

186 Appeals against sentence only.

(1) An appeal under section 175(2)(b) or (c), or by virtue of section 175(4), of this Act shall be by note of appeal, which shall state the ground of appeal.

(2) The note of appeal shall, where the appeal is—

(a) under section 175(2)(b) or (c) be lodged, within one week of—

(i) the passing of the sentence; or

(ii) the making of the order disposing of the case or deferring sentence,

with the clerk of the court from which the appeal is to be taken; or

(b) by virtue of section 175(4) be so lodged within four weeks of such passing or making.

(3) The clerk of court on receipt of the note of appeal shall—

(a) send a copy of the note to the respondent or his solicitor; and

(b) obtain a report from the judge who sentenced the convicted person or, as the case may be, who disposed of the case or deferred sentence.

(4) Subject to subsection (5) below, the clerk of court shall within two weeks of the passing of the sentence or within two weeks of the disposal or order against which the appeal is taken—

(a) send to the Clerk of Justiciary the note of appeal, together with the report mentioned in subsection (3)(b) above, a certified copy of the complaint, the minute of proceedings and any other relevant documents; and

(b) send copies of that report to the appellant and respondent or their solicitors.

(5) Where a judge—

(a) is temporarily absent from duty for any cause;

(b) is a temporary sheriff; or

(c) is a justice of the peace,

the sheriff principal of the sheriffdom in which the judgment was pronounced may extend the period of two weeks specified in subsection (4) above for such period as he considers reasonable.

(6) Subject to subsection (4) above, the report mentioned in subsection (3)(b) above shall be available only to the High Court, the parties and, on such conditions as may be prescribed by Act of Adjournal, such other persons or classes of persons as may be so prescribed.

(7) Where the judge's report is not furnished within the period mentioned in subsection (4) above or such period as extended under subsection (5) above, the High Court may extend such period, or, if it thinks fit, hear and determine the appeal without the report.

(8) Section 181 of this Act shall apply where an appellant fails to comply with the requirement of subsection (2)(a) above as they apply where an applicant fails to comply with any of the requirements of section 176(1) of this Act.

(9) An appellant under section 175(2)(b) or (c), or by virtue of section 175(4), of this Act may at any time prior to the hearing of the appeal abandon his appeal by minute, signed by himself or his solicitor, lodged—

(a) in a case where the note of appeal has not yet been sent under subsection (4)(a) above to the Clerk of Justiciary, with the clerk of court;

(b) in any other case, with the Clerk of Justiciary,

and intimated to the respondent.

(10) Sections 176(5), 177 and 182(5)(a) to (e) of this Act shall apply to appeals under section 175(2)(b) or (c), or by virtue of section 175(4), of this Act as they apply to appeals under section 175(2)(a) or (d) of this Act, except that, for the purposes of such application to any appeal by virtue of section 175(4), references in subsections (1) to (4) of section 177 to the appellant shall be construed as references to the convicted person and subsections (6) and (7) of that section shall be disregarded.

187 Leave to appeal against sentence.

(1) The decision whether to grant leave to appeal for the purposes of section 175(2)(b) or (c) of this Act shall be made by a judge of the High Court who shall—

(a) if he considers that the note of appeal and other documents sent to the Clerk of Justiciary under section 186(4)(a) of this Act disclose arguable grounds of appeal, grant leave to appeal and make such comments in writing as he considers appropriate; and

(b) in any other case—

(i) refuse leave to appeal and give reasons in writing for the refusal; and

(ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

(2) A warrant granted under subsection (1)(b)(ii) above shall not take effect until the expiry of the period of 14 days mentioned in subsection (3) below without an application to the High Court for leave to appeal having been lodged by the appellant under that subsection.

(3) Where leave to appeal is refused under subsection (1) above the appellant may, within 14 days of intimation under subsection (9) below, apply to the High Court for leave to appeal.

(4) In deciding an application under subsection (3) above the High Court shall—

(a) if, after considering the note of appeal and other documents mentioned in subsection (1) above and the reasons for the refusal, it is of the opinion that there are arguable grounds of appeal, grant leave to appeal and make such comments in writing as he considers appropriate; and

(b) in any other case—

(i) refuse leave to appeal and give reasons in writing for the refusal; and

(ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

(5) The question whether to grant leave to appeal under subsection (1) or (4) above shall be considered and determined in chambers without the parties being present.

(6) Comments in writing made under subsection (1)(a) or (4)(a) above may, without prejudice to the generality of that provision, specify the arguable grounds of appeal (whether or not they are contained in the note of appeal) on the basis of which leave to appeal is granted.

(7) Where the arguable grounds of appeal are specified by virtue of subsection (6) above it shall not, except by leave of the High Court on cause shown, be competent for the appellant to found any aspect of his appeal on any ground of appeal contained in the note of appeal but not so specified.

(8) Any application by the appellant for the leave of the High Court under subsection (7) above—

(a) shall be made not less than seven days before the date fixed for the hearing of the appeal; and

(b) shall, not less that seven days before that date, be intimated by the appellant to the Crown Agent.

(9) The Clerk of Justiciary shall forthwith intimate—

(a) a decision under subsection (1) or (4) above; and

(b) in the case of a refusal of leave to appeal, the reasons for the decision,

to the appellant or his solicitor and to the Crown Agent.

Disposal of appeals

188 Setting aside conviction or sentence: prosecutor's consent or application.

(1) Without prejudice to section 175(3) or (4) of this Act, where—

(a) an appeal has been taken under section 175(2) 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 or sentence or, as the case may be, conviction and sentence ("sentence" being construed in this section as including disposal or order) 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 or the sentence imposed following such conviction he may, by a relevant minute, apply for the conviction or sentence or, as the case may be, conviction and sentence 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 or the sentence, or both, 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;

(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; and

(iii) where the sentence is set aside, pass another (but not more severe) sentence; or

(b) refuse to set aside the conviction or sentence or, as the case may be, conviction and sentence, 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.

189 Disposal of appeal against sentence.

(1) An appeal against sentence by note of appeal shall be heard by the High Court on such date as it may fix, and the High Court may, subject to section 190(1) of this Act, dispose of such appeal by—

(a) affirming the sentence; or

(b) if the Court thinks that, having regard to all the circumstances, including any [F162]. . . evidence such as is mentioned in section 175(5) of this Act, a different sentence should have been passed, quashing the sentence and, subject to subsection (2) below, passing another sentence, whether more or less severe, in substitution therefor.

(2) In passing another sentence under subsection (1)(b) above, the Court shall not in any case increase the sentence beyond the maximum sentence which could have been passed by the inferior court.

(3) The High Court shall have power in an appeal by note of appeal to award such expenses both in the High Court and in the inferior court as it may think fit.

(4) Where, following an appeal under section 175(2)(b) or (c), or by virtue of section 175(4), of this Act, the convicted person remains liable to imprisonment or detention under the sentence of the inferior court or is so liable under a sentence passed in the appeal proceedings, the High Court shall have power where at the time of disposal of the appeal the convicted person—

(a) was at liberty on bail, to grant warrant to apprehend and imprison or detain the appellant for a term, to run from the date of such apprehension, not longer than that part of the term or terms of imprisonment or detention specified in the sentence brought under review which remained unexpired at the date of liberation; or

(b) is serving a term or terms of imprisonment or detention imposed in relation to a conviction subsequent to the conviction in respect of which the sentence appealed against was imposed, to exercise the like powers in regard to him as may be exercised, in relation to an appeal which has been abandoned, by a court of summary jurisdiction in pursuance of section 177(6) of this Act.

(5) In subsection (1) above, "appeal against sentence" shall, without prejudice to the generality of the expression, be construed as including an appeal under section 175(2)(c), and any appeal by virtue of section 175(4), of this Act; and without prejudice to subsection (6) below, other references to sentence in that subsection and in subsection (4) above shall be construed accordingly.

(6) In disposing of any appeal in a case where the accused has not been convicted, the High Court may proceed to convict him; and where it does, the reference in subsection (4) above to the conviction in respect of which the sentence appealed against was imposed shall be construed as a reference to the disposal or order appealed against.

(7) In disposing of an appeal under section 175(2)(b) to (d), (3)(b) or (4) of this Act the High Court may, without prejudice to any other power in that regard, pronounce an opinion on the sentence or other disposal or order which is appropriate in any similar case.

Textual Amendments

F162 Word in s. 189(1)(b) repealed (1.8.1997) by 1997 c. 48, s. 62(1)(2), Sch. 1 para. 21(22), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

190 Disposal of appeal where appellant insane.

(1) In relation to any appeal under section 175(2) of this Act, the High Court shall, where it appears to it that the appellant committed the act charged against him but that he was insane when he did so, dispose of the appeal by—

(a) setting aside the verdict of the inferior court and substituting therefor a verdict of acquittal on the ground of insanity; and

(b) quashing any sentence imposed on the appellant as respects the complaint and—

(i) making, in respect of the appellant, any order mentioned in section 57(2)(a) to (d) of this Act; or

(ii) making no order.

(2) Subsection (4) of section 57 of this Act shall apply to an order made under subsection (1)(b)(i) above as it applies to an order made under subsection (2) of that section.

Miscellaneous

191 Appeal by suspension or advocation on ground of miscarriage of justice.

(1) Notwithstanding section 184(2) of this Act, a party to a summary prosecution may, where an appeal under section 175 of this Act would be incompetent or would in the circumstances be inappropriate, appeal to the High Court, by bill of suspension against a conviction or, as the case may be, by advocation against an acquittal on the ground of an alleged miscarriage of justice in the proceedings.

(2) Where the alleged miscarriage of justice is referred to in an application under section 176(1) of this Act, for a stated case as regards the proceedings (or in a duly made amendment or addition to that application), an appeal under subsection (1) above shall not proceed without the leave of the High Court until the appeal to which the application relates has been finally disposed of or abandoned.

(3) Sections 182(5)(a) to (e), 183(1)(d) and (4) and 185 of this Act shall apply to appeals under this section as they apply to appeals such as are mentioned in section 176(1) of this Act.

(4) This section is without prejudice to any rule of law relating to bills of suspension or advocation in so far as such rule of law is not inconsistent with this section.

VALID FROM 30/10/2010

[F163 191A Time limit for lodging bills of advocation and bills of suspension

(1) This section applies where a party wishes—

(a) to appeal to the High Court under section 191(1) of this Act by bill of suspension against a conviction or by advocation against an acquittal, or

(b) to appeal to the High Court against, or to bring under review of the High Court, any other decision in a summary prosecution by bill of suspension or by advocation.

(2) The party must lodge the bill of suspension or bill of advocation within 3 weeks of the date of the conviction, acquittal or, as the case may be, other decision to which the bill relates.

(3) The High Court may, on the application of the party, extend the time limit in subsection (2).

(4) An application under subsection (3) must—

(a) state—

(i) the reasons why the applicant failed to comply with the time limit in subsection (2), and

(ii) the proposed grounds of appeal or review, and

(b) be intimated in writing by the applicant to the other party to the prosecution.

(5) If the other party so requests within 7 days of receipt of intimation of the application under subsection (4)(b), the other party must be given an opportunity to make representations before the application is determined.

(6) Any representations may be made in writing or, if the other party so requests, orally at a hearing; and if a hearing is fixed, the applicant must also be given an opportunity to be heard.**]**

Textual Amendments

F163 S. 191A inserted (30.10.2010) by Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), **ss. 6(1)**, 9 (with s. 6(2))

192 Appeals: miscellaneous provisions.

(1) Where an appellant has been granted bail, whether his appeal is under this Part of this Act or otherwise, he shall appear personally in court at the diet appointed for the hearing of the appeal.

(2) Where an appellant who has been granted bail does not appear at such a diet, the High Court shall either—

(a) dispose of the appeal as if it had been abandoned (in which case subsection (5) of section 177 of this Act shall apply accordingly); or

(b) on cause shown permit the appeal to be heard in his absence.

(3) No conviction, sentence, judgement, order of court or other proceeding whatsoever in or for the purposes of summary proceedings under this Act—

(a) shall be quashed for want of form; or

(b) where the accused had legal assistance in his defence, shall be suspended or set aside in respect of any objections to—

(i) the relevancy of the complaint, or to the want of specification therein; or

(ii) the competency or admission or rejection of evidence at the trial in the inferior court,

unless such objections were timeously stated.

(4) 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.

(5) Any officer of law may serve any bill of suspension or other writ relating to an appeal.

193 Suspension of disqualification, forfeiture etc.

(1) Where upon conviction of any person—

(a) any disqualification, forfeiture or disability attaches to him by reason of such conviction; or

(b) any property, matters or things which are the subject of the prosecution or connected therewith are to be or may be ordered to be destroyed or forfeited,

if the court before which he was convicted thinks fit, the disqualification, forfeiture or disability or, as the case may be, destruction or forfeiture or order for destruction or forfeiture shall be suspended pending the determination of any appeal against conviction or sentence (or disposal or order).

(2) Subsection (1) above does not apply in respect of any disqualification, forfeiture or, as the case may be, destruction or forfeiture or order for destruction or forfeiture under or by virtue of any enactment which contains express provision for the suspension of such disqualification, forfeiture or, as the case may be, destruction or forfeiture or order for destruction or forfeiture pending the determination of any appeal against conviction or sentence (or disposal or order).

(3) Where, upon conviction, a fine has been imposed upon a person or a compensation order has been made against him under section 249 of this Act—

(a) the fine or compensation order shall not be enforced against him and he shall not be liable to make any payment in respect of the fine or compensation order; and

(b) any money paid under the compensation order shall not be paid by the clerk of court to the entitled person under subsection (9) of that section,

pending the determination of any appeal against conviction or sentence (or disposal or order).

[F164 193A Suspension of certain sentences pending determination of appeal.

(1) Where a convicted person or the prosecutor appeals to the High Court under section 175 of this Act, the court may on the application of the appellant direct that the whole, or any remaining part, of a relevant sentence shall be suspended until the appeal, if it is proceeded with, is determined.

(2) Where the court has directed the suspension of the whole or any remaining part of a person's relevant sentence, the person shall, unless the High Court otherwise directs, appear personally in court on the day or days fixed for the hearing of the appeal.

(3) Where a person fails to appear personally in court as mentioned in subsection (2) above, the court may—

(a) if he is the appellant—

(i) decline to consider the appeal; and

(ii) dismiss it summarily; or

(b) whether or not he is the appellant—

(i) consider and determine the appeal; or

(ii) make such other order as the court thinks fit.

(4) In this section "relevant sentence" means any one or more of the following—

(a) a probation order;

(b) a supervised attendance order made under section 236(6) of this Act;

(c) a community service order;

(d) a restriction of liberty order.**]**

Textual Amendments

F164 S. 193A inserted (1.8.1997 except s. 193A(4)(d) which is in force on 1.7.1998) by 1997 c. 48, **s. 24(2)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5); S.I. 1997/2323, **art. 5(1)**

194 Computation of time.

(1) If any period of time specified in any provision of this Part of this Act relating to appeals expires on a Saturday, Sunday or court holiday prescribed for the relevant court, the period shall be extended to expire on the next day which is not a Saturday, Sunday or such court holiday.

(2) Where a judge against whose judgement an appeal is taken—

(a) is temporarily absent from duty for any cause;

(b) is a temporary sheriff; or

(c) is a justice of the peace,

the sheriff principal of the sheriffdom in which the court at which the judgement was pronounced is situated may extend any period specified in sections 178(1) and 179(4) and (7) of this Act for such period as he considers reasonable.

(3) For the purposes of sections 176(1)(a) and 178(1) of this Act, summary proceedings shall be deemed to be finally determined on the day on which sentence is passed in open court; except that, where in relation to an appeal—

(a) under section 175(2)(a) or (3)(a); or

(b) in so far as it is against conviction, under section 175(2)(d),

of this Act sentence is deferred under section 202 of this Act, they shall be deemed finally determined on the day on which sentence is first so deferred in open court.

VALID FROM 01/01/1998

[F165 PART XA

SCOTTISH CRIMINAL CASES REVIEW COMMISSION]

Textual Amendments

F165 Pt. XA (ss. 194A-194L) inserted (1.1.1998 for the purpose of inserting ss. 194A, 194E and 194G, otherwise 1.4.1999) by 1997 c. 48, **s. 25(1)**; S.I. 1997/3004, art. 2, **Sch.**; S.I. 1999/652, art. 2, **Sch.** (subject to art. 3)

Modifications etc. (not altering text)

C68 Pt. XA (ss. 194A-194L) extended (1.4.1999) by S.I. 1999/1181, **art. 2**

[F166 The Scottish Criminal Cases Review Commission

Textual Amendments

F166 Pt. XA (ss. 194A-194L) inserted (1.1.1998 for the purpose of inserting ss. 194A, 194E and 194G, otherwise 1.4.1999) by 1997 c. 48, **s. 25(1)**; S.I. 1997/3004, art. 2, **Sch.**; S.I. 1999/652, art. 2, **Sch.** (subject to art. 3)

F167 194A Scottish Criminal Cases Review Commission.

(1) There shall be established a body corporate to be known as the Scottish Criminal Cases Review Commission (in this Act referred to as "the Commission").

(2) The Commission shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Commission's property shall not be regarded as property of, or held on behalf of, the Crown.

(3) The Commission shall consist of not fewer than three members.

(4) The members of the Commission shall be appointed by Her Majesty on the recommendation of the Secretary of State.

(5) At least one third of the members of the Commission shall be persons who are legally qualified; and for this purpose a person is legally qualified if he is an advocate or solicitor of at least ten years' standing.

(6) At least two thirds of the members of the Commission shall be persons who appear to the Secretary of State to have knowledge or experience of any aspect of the criminal justice system; and for the purposes of this subsection the criminal justice system includes, in particular, the investigation of offences and the treatment of offenders.

(7) Schedule 9A to this Act, which makes further provision as to the Commission, shall have effect.

Textual Amendments

F167 S. 194A inserted (1.1.1998) by 1997 c. 48, **s. 25(1)**; S.I. 1997/3004, art. 2, **Sch.**

References to High Court

VALID FROM 01/04/1999

F168 194B Cases dealt with on indictment.

(1) The Commission on the consideration of any conviction of a person or of the sentence (other than sentence of death) passed on a person who has been convicted on indictment **[**F169or complaint**]** may, if they think fit, at any time, and whether or not an appeal against such conviction or sentence has previously been heard and determined by the High Court, refer the whole case to the High Court and the case shall be heard and determined, subject to any directions the High Court may make, as if it were an appeal under Part VIII **[**F170or, as the case may be, Part X**]** of this Act.

(2) The power of the Commission under this section to refer to the High Court the case of a person convicted shall be exercisable whether or not that person has petitioned for the exercise of Her Majesty's prerogative of mercy.

(3) This section shall apply in relation to a finding under section 55(2) and an order under section 57(2) of this Act as it applies, respectively, in relation to a conviction and a sentence.

(4) For the purposes of this section "person" includes a person who is deceased.

Textual Amendments

F168 S. 194B inserted (1.4.1999) by 1997 c. 48, **s. 25(1)**; S.I. 1999/652, art. 2, **Sch.** (subject to art. 3)

F169 Words in s. 194B(1) inserted (1.4.1999) by S.I. 1999/1181, **art. 3(a)**

F170 Words in s. 194B(1) inserted (1.4.1999) by S.I. 1999/1181, **art. 3(b)**

VALID FROM 01/04/1999

F171 194C Grounds for reference.

The grounds upon which the Commission may refer a case to the High Court are that they believe—

(a) that a miscarriage of justice may have occurred; and

(b) that it is in the interests of justice that a reference should be made.

Textual Amendments

F171 S. 194C inserted (1.4.1999) by 1997 c. 48, **s. 25(1)**; S.I. 1999/652, art. 2, **Sch.** (subject to art. 3)

VALID FROM 01/04/1999

F172 194D Further provision as to references.

(1) A reference of a conviction, sentence or finding may be made under section 194B of this Act whether or not an application has been made by or on behalf of the person to whom it relates.

(2) In considering whether to make a reference the Commission shall have regard to—

(a) any application or representations made to the Commission by or on behalf of the person to whom it relates;

(b) any other representations made to the Commission in relation to it: and

(c) any other matters which appear to the Commission to be relevant.

(3) In considering whether to make a reference the Commission may at any time refer to the High Court for the Court's opinion any point on which they desire the Court's assistance; and on a reference under this subsection the High Court shall consider the point referred and furnish the Commission with their opinion on the point.

(4) Where the Commission make a reference to the High Court under section 194B of this Act they shall—

(a) give to the Court a statement of their reasons for making the reference; and

(b) send a copy of the statement to every person who appears to them to be likely to be a party to any proceedings on the appeal arising from the reference.

(5) In every case in which—

(a) an application has been made to the Commission by or on behalf of any person for the reference by them of any conviction, sentence or finding; but

(b) the Commission decide not to make a reference of the conviction, sentence or finding,

they shall give a statement of the reasons for their decision to the person who made the application.

Textual Amendments

F172 S. 194D inserted (1.4.1999) by 1997 c. 48, **s. 25(1)**; S.I. 1999/652, art. 2, **Sch.** (subject to art. 3)

VALID FROM 30/10/2010

[F173 194DA High Court's power to reject a reference made by the Commission

(1) Where the Commission has referred a case to the High Court under section 194B of this Act, the High Court may, despite section 194B(1), reject the reference if the Court considers that it is not in the interests of justice that any appeal arising from the reference should proceed.

(2) In determining whether or not it is in the interests of justice that any appeal arising from the reference should proceed, the High Court must have regard to the need for finality and certainty in the determination of criminal proceedings.

(3) On rejecting a reference under this section, the High Court may make such order as it considers necessary or appropriate.**]**

Textual Amendments

F166 Pt. XA (ss. 194A-194L) inserted (1.1.1998 for the purpose of inserting ss. 194A, 194E and 194G, otherwise 1.4.1999) by 1997 c. 48, **s. 25(1)**; S.I. 1997/3004, art. 2, **Sch.**; S.I. 1999/652, art. 2, **Sch.** (subject to art. 3)

F173 S. 194DA inserted (30.10.2010) by Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), **ss. 7(4)**, 9

F174 194E Extension of Commission's remit to summary cases.

(1) The Secretary of State may by order provide for this Part of this Act to apply in relation to convictions, sentences and findings made in summary proceedings as they apply in relation to convictions, sentences and findings made in solemn proceedings, and may for that purpose make in such an order such amendments to the provisions of this Part as appear to him to be necessary or expedient.

(2) An order under this section shall be made by statutory instrument, and shall not have effect unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

Textual Amendments

F166 Pt. XA (ss. 194A-194L) inserted (1.1.1998 for the purpose of inserting ss. 194A, 194E and 194G, otherwise 1.4.1999) by 1997 c. 48, **s. 25(1)**; S.I. 1997/3004, art. 2, **Sch.**; S.I. 1999/652, art. 2, **Sch.** (subject to art. 3)

F174 S. 194E inserted (1.1.1998) by 1997 c. 48, **s. 25(1)**; S.I. 1997/3004, art. 2, **Sch.**

VALID FROM 01/04/1999

F175 194F Further powers.

The Commission may take any steps which they consider appropriate for assisting them in the exercise of any of their functions and may, in particular—

(a) themselves undertake inquiries and obtain statements, opinions or reports; or

(b) request the Lord Advocate or any other person to undertake such inquiries or obtain such statements, opinions and reports.

Textual Amendments

F166 Pt. XA (ss. 194A-194L) inserted (1.1.1998 for the purpose of inserting ss. 194A, 194E and 194G, otherwise 1.4.1999) by 1997 c. 48, **s. 25(1)**; S.I. 1997/3004, art. 2, **Sch.**; S.I. 1999/652, art. 2, **Sch.** (subject to art. 3)

F175 S. 194F inserted (1.4.1999) by 1997 c. 48, **s. 25(1)**; S.I. 1999/652, art. 2, **Sch.** (subject to art. 3)

F176 194G Supplementary provision.

(1) The Secretary of State may by order make such incidental, consequential, transitional or supplementary provisions as may appear to him to be necessary or expedient for the purpose of bringing this Part of this Act into operation, and, without prejudice to the generality of the foregoing, of dealing with any cases being considered by him under section 124 of this Act at the time when this Part comes into force, and an order under this section may make different provision in relation to different cases or classes of case.

(2) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F166 Pt. XA (ss. 194A-194L) inserted (1.1.1998 for the purpose of inserting ss. 194A, 194E and 194G, otherwise 1.4.1999) by 1997 c. 48, **s. 25(1)**; S.I. 1997/3004, art. 2, **Sch.**; S.I. 1999/652, art. 2, **Sch.** (subject to art. 3)

F176 S. 194G inserted (1.1.1998) by 1997 c. 48, **s. 25(1)**; S.I. 1997/3004, art. 2, **Sch.**

VALID FROM 01/04/1999

Powers of investigation of Commission

F177 194H Power to request precognition on oath.

(1) Where it appears to the Commission that a person may have information which they require for the purposes of carrying out their functions, and the person refuses to make any statement to them, they may apply to the sheriff under this section.

(2) On an application made by the Commission under this section, the sheriff may, if he is satisfied that it is reasonable in the circumstances, grant warrant to cite the person concerned to appear before the sheriff in chambers at such time or place as shall be specified in the citation, for precognition on oath by a member of the Commission or a person appointed by them to act in that regard.

(3) Any person who, having been duly cited to attend for precognition under subsection (2) above and having been given at least 48 hours notice, fails without reasonable excuse to attend shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 21 days; and the court may issue a warrant for the apprehension of the person concerned ordering him to be brought before a sheriff for precognition on oath.

(4) Any person who, having been duly cited to attend for precognition under subsection (2) above, attends but—

(a) refuses to give information within his knowledge or to produce evidence in his possession; or

(b) prevaricates in his evidence,

shall be guilty of an offence and shall be liable to be summarily subjected to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 21 days.

Textual Amendments

F166 Pt. XA (ss. 194A-194L) inserted (1.1.1998 for the purpose of inserting ss. 194A, 194E and 194G, otherwise 1.4.1999) by 1997 c. 48, **s. 25(1)**; S.I. 1997/3004, art. 2, **Sch.**; S.I. 1999/652, art. 2, **Sch.** (subject to art. 3)

F177 S. 194H inserted (1.4.1999) by 1997 c. 48, **s. 25(1)**; S.I. 1999/652, art. 2, **Sch.** (subject to art. 3)

F178 194I Power to obtain documents etc.

(1) Where the Commission believe that a person or a public body has possession or control of a document or other material which may assist them in the exercise of any of their functions, they may apply to the High Court for an order requiring that person or body—

(a) to produce the document or other material to the Commission or to give the Commission access to it; and

(b) to allow the Commission to take away the document or other material or to make and take away a copy of it in such form as they think appropriate,

and such an order may direct that the document or other material must not be destroyed, damaged or altered before the direction is withdrawn by the Court.

(2) The duty to comply with an order under this section is not affected by any obligation of secrecy or other limitation on disclosure (including any such obligation or limitation imposed by or by virtue of any enactment) which would otherwise prevent the production of the document or other material to the Commission or the giving of access to it to the Commission.

(3) The documents and other material covered by this section include, in particular, any document or other material obtained or created during any investigation or proceedings relating to—

(a) the case in relation to which the Commission's function is being or may be exercised; or

(b) any other case which may be in any way connected with that case (whether or not any function of the Commission could be exercised in relation to that other case).

(4) In this section—

"Minister" means a Minister of the Crown as defined by section 8 of the Ministers of the Crown Act 1975;

"police force" means any police force maintained for a local government area under section 1(1) of the Police (Scotland) Act 1967 and references to a chief constable are references to the chief constable of such a force within the meaning of that Act; and

"public body" means

(a) any police force;

(b) any government department, local authority or other body constituted for the purposes of the public service, local government or the administration of justice; or

(c) any other body whose members are appointed by Her Majesty, any Minister or any government department or whose revenues consist wholly or mainly of money provided by Parliament.

Textual Amendments

F178 S. 194I inserted (1.4.1999) by 1997 c. 48, **s. 25(1)**; S.I. 1999/652, art. 2, **Sch.** (subject to art. 3)

VALID FROM 13/12/2010

[F179 194IA Power to request assistance in obtaining information abroad

(1) Where it appears to the Commission that there may be information which they require for the purposes of carrying out their functions, and the information is outside the United Kingdom, they may apply to the High Court to request assistance.

(2) On an application made by the Commission under subsection (1), the High Court may request assistance if satisfied that it is reasonable in the circumstances.

(3) In this section, "request assistance" means request assistance in obtaining outside the United Kingdom any information specified in the request for use by the Commission for the purposes of carrying out their functions.

(4) Section 8 of the Crime (International Co-operation) Act 2003 (c.32) (sending requests for assistance) applies to requests for assistance under this section as it applies to requests for assistance under section 7 of that Act.

(5) Subsections (2), (3) and (6) of section 9 of that Act (use of evidence obtained) apply to information obtained pursuant to a request for assistance under this section as they apply under subsection (1) of that section to evidence obtained pursuant to a request for assistance under section 7 of that Act.**]**

Textual Amendments

F166 Pt. XA (ss. 194A-194L) inserted (1.1.1998 for the purpose of inserting ss. 194A, 194E and 194G, otherwise 1.4.1999) by 1997 c. 48, **s. 25(1)**; S.I. 1997/3004, art. 2, **Sch.**; S.I. 1999/652, art. 2, **Sch.** (subject to art. 3)

F179 S. 194IA inserted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 105**, 206(1); S.S.I. 2010/413, **art. 2**, Sch.

VALID FROM 01/04/1999

Disclosure of information

F180 194J Offence of disclosure.

(1) A person who is or has been a member or employee of the Commission shall not disclose any information obtained by the Commission in the exercise of any of their functions unless the disclosure of the information is excepted from this section by section 194K of this Act.

(2) A member of the Commission shall not authorise the disclosure by an employee of the Commission of any information obtained by the Commission in the exercise of any of their functions unless the authorisation of the disclosure of the information is excepted from this section by section 194K of this Act.

(3) A person who contravenes this section is guilty of an offence and liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.

Textual Amendments

F180 S. 194J inserted (1.4.1999) by 1997 c. 48, **s. 25(1)**; S.I. 1999/652, art. 2, **Sch.** (subject to art. 3)

F181 194K Exceptions from obligations of non-disclosure.

(1) The disclosure of information, or the authorisation of the disclosure of information, is excepted from section 194J of this Act by this section if the information is disclosed, or is authorised to be disclosed—

(a) for the purposes of any criminal, disciplinary or civil proceedings;

(b) in order to assist in dealing with an application made to the Secretary of State for compensation for a miscarriage of justice;

(c) by a person who is a member or an employee of the Commission to another person who is a member or an employee of the Commission;

(d) in any statement or report required by this Act;

(e) in or in connection with the exercise of any function under this Act; or

(f) in any circumstances in which the disclosure of information is permitted by an order made by the Secretary of State.

(2) The disclosure of information is also excepted from section 194J of this Act by this section if the information is disclosed by an employee of the Commission who is authorised to disclose the information by a member of the Commission.

(3) The disclosure of information, or the authorisation of the disclosure of information, is also excepted from section 194J of this Act by this section if the information is disclosed, or is authorised to be disclosed, for the purposes of—

(a) the investigation of an offence; or

(b) deciding whether to prosecute a person for an offence,

unless the disclosure is or would be prevented by an obligation or other limitation on disclosure (including any such obligation or limitation imposed by, under or by virtue of any enactment) arising otherwise than under that section.

(4) Where the disclosure of information is excepted from section 194J of this Act by subsection (1) or (2) above, the disclosure of the information is not prevented by any obligation of secrecy or other limitation on disclosure (including any such obligation or limitation imposed by, under or by virtue of any enactment) arising otherwise than under that section.

(5) The power to make an order under subsection (1)(f) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F181 S. 194K inserted (1.4.1999) by 1997 c. 48, **s. 25(1)**; S.I. 1999/652, art. 2, **Sch.** (subject to art. 3)

[F182 194L Consent to disclosure.

(1) Where a person or body is required by an order under section 194I of this Act to produce or allow access to a document or other material to the Commission and notifies them that any information contained in the document or other material to which the order relates is not to be disclosed by the Commission without his or its prior consent, the Commission shall not disclose the information without such consent.

(2) Such consent may not be withheld unless—

(a) (apart from section 194I of this Act) the person would have been prevented by any obligation of secrecy or other limitation on disclosure from disclosing the information without such consent; and

(b) it is reasonable for the person to withhold his consent to disclosure of the information by the Commission.

(3) An obligation of secrecy or other limitation on disclosure which applies to a person only where disclosure is not authorised by another person shall not be taken for the purposes of subsection (2)(a) above to prevent the disclosure by the person of information to the Commission unless—

(a) reasonable steps have been taken to obtain the authorisation of the other person; or

(b) such authorisation could not reasonably be expected to be obtained.**]]**

Textual Amendments

F182 S. 194L inserted (1.4.1999) by 1997 c. 48, **s. 25(1)**; S.I. 1999/652, art. 2, **Sch.** (subject to art. 3)

PART XI

SENTENCING

General

195 Remit to High Court for sentence.

(1) Where at any diet in proceedings on indictment in the sheriff court, sentence falls to be imposed but the sheriff holds that any competent sentence which he can impose is inadequate so that the question of sentence is appropriate for the High Court, he shall—

(a) endorse upon the record copy of the indictment a certificate of the plea or the verdict, as the case may be;

(b) by interlocutor written on the record copy remit the convicted person to the High Court for sentence; and

(c) append to the interlocutor a note of his reasons for the remit,

and a remit under this section shall be sufficient warrant to bring the accused before the High Court for sentence and shall remain in force until the person is sentenced.

(2) Where under any enactment an offence is punishable on conviction on indictment by imprisonment for a term exceeding three years but the enactment either expressly or impliedly restricts the power of the sheriff to impose a sentence of imprisonment for a term exceeding three years, it shall be competent for the sheriff to remit the accused to the High Court for sentence under subsection (1) above; and it shall be competent for the High Court to pass any sentence which it could have passed if the person had been convicted before it.

(3) When the Clerk of Justiciary receives the record copy of the indictment he shall send a copy of the note of reasons to the convicted person or his solicitor and to the Crown Agent.

(4) Subject to subsection (3) above, the note of reasons shall be available only to the High Court and the parties.

196 Sentence following guilty plea.

[F183(1)**]** In determining what sentence to pass on, or what other disposal or order to make in relation to, an offender who has pled guilty to an offence, a court may take into account—

(a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and

(b) the circumstances in which that indication was given.

[F184(2) Where the court is passing sentence on an offender under section 205B(2) of this Act and that offender has pled guilty to the offence for which he is being so sentenced, the court may, after taking into account the matters mentioned in paragraphs (a) and (b) of subsection (1) above, pass a sentence of less than seven years imprisonment or, as the case may be, detention but any such sentence shall not be of a term of imprisonment or period of detention of less than five years, two hundred and nineteen days.**]**

Textual Amendments

F183 S. 196 renumbered as s. 196(1) (20.10.1997) by 1997 c. 48, **s. 2(2)(a)**; S.I. 1997/2323, art. 3, **Sch. 1**

F184 S. 196(2) inserted (20.10.1997) by 1997 c. 48, **s. 2(2)(b)**; S.I. 1997/2323, art. 3, **Sch. 1**

197 Sentencing guidelines.

Without prejudice to any rule of law, a court in passing sentence shall have regard to any relevant opinion pronounced under section 118(7) or section 189(7) of this Act.

198 Form of sentence.

(1) In any case the sentence to be pronounced shall be announced by the judge in open court and shall be entered in the record in the form prescribed by Act of Adjournal.

(2) In recording a sentence of imprisonment, it shall be sufficient to minute the term of imprisonment to which the court sentenced the accused, without specifying the prison in which the sentence is to be carried out; and an entry of sentence, signed by the clerk of court, shall be full warrant and authority for any subsequent execution of the sentence and for the clerk to issue extracts for the purposes of execution or otherwise.

(3) In extracting a sentence of imprisonment, the extract may be in the form set out in an Act of Adjournal or as nearly as may be in such form.

199 Power to mitigate penalties.

(1) Subject to subsection (3) below, where a person is convicted of the contravention of an enactment and the penalty which may be imposed involves—

(a) imprisonment;

(b) the imposition of a fine;

(c) the finding of caution for good behaviour or otherwise whether or not imposed in addition to imprisonment or a fine,

subsection (2) below shall apply.

(2) Where this subsection applies, the court, in addition to any other power conferred by statute, shall have power—

(a) to reduce the period of imprisonment;
(b) to substitute for imprisonment a fine (either with or without the finding of caution for good behaviour);
(c) to substitute for imprisonment or a fine the finding of caution;
(d) to reduce the amount of the fine;
(e) to dispense with the finding of caution.

(3) Subsection (2) above shall not apply—
(a) in relation to an enactment which carries into effect a treaty, convention, or agreement with a foreign state which stipulates for a fine of a minimum amount; or
(b) to proceedings taken under any Act relating to any of Her Majesty's regular or auxiliary forces. **[**[F185]; or
(c) to any proceedings in which the court on conviction is under a duty to impose a sentence under section 205A(2) or 205B(2) of this Act.**]**

(4) Where, in summary proceedings, a fine is imposed in substitution for imprisonment, the fine—
(a) in the case of an offence which is triable either summarily or on indictment, shall not exceed the prescribed sum; and
(b) in the case of an offence triable only summarily, shall not exceed level 4 on the standard scale.

(5) Where the finding of caution is imposed under this section—
(a) in respect of an offence which is triable only summarily, the amount shall not exceed level 4 on the standard scale and the period shall not exceed that which the court may impose under this Act; and
(b) in any other case, the amount shall not exceed the prescribed sum and the period shall not exceed 12 months.

Textual Amendments

F185 S. 199(3)(c) and the preceding word "; or" inserted (20.10.1997 for specified purposes and otherwise prosp.) by 1997 c. 48, ss. 62(1), 65(2), **Sch. 1 para. 21(23)**; S.I. 1997/2323, art. 3, **Sch. 1**

Modifications etc. (not altering text)

C69 S. 199(2)(b) excluded (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), **ss. 48(2)**, 62(2); S.S.I. 2010/357, **art. 2**

Pre-sentencing procedure

200 Remand for inquiry into physical or mental condition.

(1) Without prejudice to any powers exercisable by a court under section 201 of this Act, where—
(a) the court finds that an accused has committed an offence punishable with imprisonment; and
(b) it appears to the court that before the method of dealing with him is determined an inquiry ought to be made into his physical or mental condition,

subsection (2) below shall apply.

(2) Where this subsection applies the court shall—

(a) for the purpose of inquiry solely into his physical condition, remand him in custody or on bail;

(b) for the purpose of inquiry into his mental condition (whether or not in addition to his physical condition), remand him in custody or on bail or, where the court is satisfied—

(i) on the written or oral evidence of a medical practitioner, that the person appears to be suffering from a mental disorder; and

(ii) that a hospital is available for his admission and suitable for his detention,

make an order committing him to that hospital,

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.

(3) Where the court is of the opinion that a person ought to continue to be committed to hospital for the purpose of inquiry into his mental condition following the expiry of the period specified in an order for committal to hospital under paragraph (b) of subsection (2) above, the court may—

(a) if the condition in sub-paragraph (i) of that paragraph continues to be satisfied and a suitable hospital is available for his continued detention, renew the order for such further period not exceeding three weeks as the court thinks necessary to enable a medical examination and report to be made; and

(b) in any other case, remand the person in custody or on bail in accordance with subsection (2) above.

(4) An order under subsection (3)(a) above may, unless objection is made by or on behalf of the person to whom it relates, be made in his absence.

(5) Where, before the expiry of the period specified in an order for committal to hospital under subsection (2)(b) above, the court considers, on an application made to it, that committal to hospital is no longer required in relation to the person, the court shall revoke the order and may make such other order, under subsection (2)(a) above or any other provision of this Part of this Act, as the court considers appropriate.

(6) Where an accused is remanded on bail under this section, it shall be a condition of the order granting bail that he shall—

(a) undergo a medical examination by a duly qualified registered medical practitioner or, where the inquiry is into his mental condition, and the order granting bail so specifies, two such practitioners; and

(b) for the purpose of such examination, attend at an institution or place, or on any such practitioner specified in the order granting bail 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 order granting bail 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.

(7) On exercising the powers conferred by this section to remand in custody or on bail 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 it appears to the court 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.

(8) On making an order of committal to hospital under subsection (2)(b) above the court shall send to the hospital specified in the order a statement of the reasons for which the court is of the opinion that an inquiry ought to be made into the mental condition of the person to whom it relates, and of any information before the court about his mental condition.

(9) A person remanded under this section may appeal against the refusal of bail or against the conditions imposed and a person committed to hospital under this section may appeal against the order of committal within 24 hours of his remand or, as the case may be, committal, by note of appeal presented to the High Court, and the High Court, either in court or in chambers, may after hearing parties—

(a) review the order and grant bail on such conditions as it thinks fit; or

(b) confirm the order; or

(c) in the case of an appeal against an order of committal to hospital, revoke the order and remand the person in custody.

(10) The court may, on cause shown, vary an order for committal to hospital under subsection (2)(b) above by substituting another hospital for the hospital specified in the order.

(11) Subsection (2)(b) above shall apply to the variation of an order under subsection (10) above as it applies to the making of an order for committal to hospital.

201 Power of court to adjourn case before sentence.

(1) Where an accused has been convicted or the court has found that he committed the offence and before he has been sentenced or otherwise dealt with, subject to subsection (3) below, the court may adjourn the case for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with his case.

(2) Where the court adjourns a case solely for the purpose mentioned in subsection (1) above, it shall remand the accused in custody or on bail or ordain him to appear at the adjourned diet.

(3) A court shall not adjourn the hearing of a case as mentioned in subsection (1) above for any single period exceeding—

(a) where the accused is remanded in custody, three weeks; and

(b) where he is remanded on bail or ordained to appear, four weeks or, on cause shown, eight weeks.

(4) An accused who is remanded under this section may appeal against the refusal of bail or against the conditions imposed within 24 hours of his remand, by note of appeal presented to the High Court, and the High Court, either in court or in chambers, may, after hearing parties—

(a) review the order appealed against and either grant bail on such conditions as it thinks fit or ordain the accused to appear at the adjourned diet; or

(b) confirm the order.

202 Deferred sentence.

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

(2) If it appears to the court which deferred sentence on an accused under subsection (1) above that he has been convicted during the period of deferment, by a court in any part of Great Britain of an offence committed during that period and has been dealt with for that offence, the court which deferred sentence may—

(a) issue a warrant for the arrest of the accused; or

(b) instead of issuing such a warrant in the first instance, issue a citation requiring him to appear before it at such time as may be specified in the citation,

and on his appearance or on his being brought before the court it may deal with him in any manner in which it would be competent for it to deal with him on the expiry of the period of deferment.

(3) Where a court which has deferred sentence on an accused under subsection (1) above convicts him of another offence during the period of deferment, it may deal with him for the original offence in any manner in which it would be competent for it to deal with him on the expiry of the period of deferment, as well as for the offence committed during the said period.

203 Reports.

(1) Where a person specified in section 27(1)(b)(i) to (vi) of the [M46]Social Work (Scotland) Act 1968 commits an offence, the court shall not dispose of the case without obtaining from the local authority in whose area the person resides a report as to—

(a) the circumstances of the offence; and

(b) the character of the offender, including his behaviour while under the supervision, or as the case may be subject to the order, so specified in relation to him.

(2) In subsection (1) above, "the court" does not include a district court.

(3) Where, in any case, a report by an officer of a local authority is made to the court 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.

Marginal Citations

M46 1968 c.49.

VALID FROM 28/03/2011

[F186 203A Reports about organisations

(1) This section applies where an organisation is convicted of an offence.

(2) Before dealing with the organisation in respect of the offence, the court may obtain a report into the organisation's financial affairs and structural arrangements.

(3) The report is to be prepared by a person appointed by the court.

(4) The person appointed to prepare the report is referred to in this section as the "reporter".

(5) The court may issue directions to the reporter about—

(a) the information to be contained in the report,

(b) the particular matters to be covered by the report,

(c) the time by which the report is to be submitted to the court.

(6) The court may order the organisation to give the reporter and any person acting on the reporter's behalf—

(a) access at all reasonable times to the organisation's books, documents and other records,

(b) such information or explanation as the reporter thinks necessary.

(7) The reporter's costs in preparing the report are to be paid by the clerk of court, but the court may order the organisation to reimburse to the clerk all or a part of those costs.

(8) An order under subsection (7) may be enforced by civil diligence as if it were a fine.

(9) On submission of the report to the court, the clerk of court must provide a copy of the report to—

(a) the organisation,

(b) the organisation's solicitor (if any), and

(c) the prosecutor.

(10) The court must have regard to the report in deciding how to deal with the organisation in respect of the offence.

(11) If the court decides to impose a fine, the court must, in determining the amount of the fine, have regard to—

(a) the report, and

(b) if the court makes an order under subsection (7), the amount of costs that the organisation is required to reimburse under the order.

(12) Where the court—

(a) makes an order under subsection (7), and

(b) imposes a fine on the organisation,

any payment by the organisation is first to be applied in satisfaction of the order under subsection (7).

(13) Where the court also makes a compensation order in respect of the offence, any payment by the organisation is first to be applied in satisfaction of the compensation order before being applied in accordance with subsection (12).**]**

Textual Amendments

F186 S. 203A inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 22**, 206(1)

Imprisonment, etc.

204 Restrictions on passing sentence of imprisonment or detention.

(1) A court shall not pass a sentence of imprisonment or of detention in respect of any offence, nor impose imprisonment, or detention, under section 214(2) of this Act in respect of failure to pay a fine, on an accused who is not legally represented in that court and has not been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom, unless the accused either—

(a) applied for legal aid and the application was refused on the ground that he was not financially eligible; or

(b) having been informed of his right to apply for legal aid, and having had the opportunity, failed to do so.

(2) A court shall not pass a sentence of imprisonment on a person of or over twenty-one years of age who has not been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom unless the court considers that no other method of dealing with him is appropriate; [F187]. . ..

(3) Where a court of summary jurisdiction passes a sentence of imprisonment on any such person as is mentioned in subsection (2) above, the court shall state the reason for its opinion that no other method of dealing with him is appropriate, and shall have that reason entered in the record of the proceedings.

(4) The court shall, for the purpose of determining whether a person has been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom—

(a) disregard a previous sentence of imprisonment which, having been suspended, has not taken effect under section 23 of the [M47]Powers of Criminal Courts Act 1973 or under section 19 of the [M48]Treatment of Offenders Act (Northern Ireland) 1968;

(b) construe detention as meaning —

(i) in relation to Scotland, detention in a young offenders institution or detention centre;

(ii) in relation to England and Wales a sentence of youth custody, borstal training or detention in a young offender institution or detention centre; and

(iii) in relation to Northern Ireland, detention in a young offenders centre.

(5) This section does not affect the power of a court to pass sentence on any person for an offence the sentence for which is fixed by law.

(6) In this section—

"legal aid" means legal aid for the purposes of any part of the proceedings before the court;

"legally represented" means represented by counsel or a solicitor at some stage after the accused is found guilty and before he is dealt with as referred to in subsection (1) above.

Textual Amendments

F187 Words in s. 204(2) repealed (1.8.1997) by 1997 c. 48, s. 62(2), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

Marginal Citations

M47 1973 c.62.

M48 1968 c.29. (N.I.)

VALID FROM 30/09/1998

[F188 204A Restriction on consecutive sentences for released prisoners.

A court sentencing a person to imprisonment or other detention shall not order or direct that the term of imprisonment or detention shall commence on the expiration of any other such sentence from which he has been released at any time under the existing or new provisions within the meaning of Schedule 6 to the M49 Prisoners and Criminal Proceedings (Scotland) Act 1993.**]**

Textual Amendments

F188 S. 204A inserted (30.9.1998) by 1998 c. 37, **s. 112**; S.I. 1998/2327, **art. 2(1)(x)**

Marginal Citations

M49 1993 c.9.

VALID FROM 01/12/2003

[F189 204B Consecutive sentences: life prisoners etc.

(1) This section applies in respect of sentencing for offences committed after the coming into force of this section.

(2) Where, in solemn proceedings, the court sentences a person to imprisonment or other detention, the court may—

(a) if the person is serving or is liable to serve the punishment part of a previous sentence, frame the sentence to take effect on the day after that part of that sentence is or would be due to expire; or

(b) if the person is serving or is liable to serve the punishment parts of two or more previous sentences, frame the sentence to take effect on the day after

the later or (as the case may be) latest expiring of those parts is or would be due to expire.

(3) Where, in such proceedings, it falls to the court to sentence a person who is subject to a previous sentence in respect of which a punishment part requires to be (but has not been) specified, the court shall not sentence the person until such time as the part is either specified or no longer requires to be specified.

(4) Where the court sentences a person to a sentence of imprisonment or other detention for life, for an indeterminate period or without limit of time, the court may, if the person is serving or is liable to serve for any offence—

(a) a previous sentence of imprisonment or other detention the term of which is not treated as part of a single term under section 27(5) of the 1993 Act; or

(b) two or more previous sentences of imprisonment or other detention the terms of which are treated as a single term under that section of that Act,

frame the sentence to take effect on the day after the person would (but for the sentence so framed and disregarding any subsequent sentence) be entitled to be released under the provisions referred to in section 204A of this Act as respects the sentence or sentences.

(5) Subsection (4)(a) above shall not apply where the sentence is a sentence from which he has been released at any time under the provisions referred to in section 204A of this Act.

(6) In this section, any reference to a punishment part of a sentence shall be construed by reference to—

(a) the punishment part of the sentence as is specified in an order mentioned in section 2(2) of the 1993 Act; or

(b) any part of the sentence which has effect, by virtue of section 10 of the 1993 Act or the schedule to the Convention Rights (Compliance)(Scotland) Act 2001 (asp 7), as if it were the punishment part so specified,

and "the 1993 Act" means the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9).

(7) This section is without prejudice to any other power under any enactment or rule of law as respects sentencing.**]**

Textual Amendments

F189 S. 204B inserted (1.12.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 26(1)**, 89; S.S.I. 2003/475, **art. 2**, Sch.

205 Punishment for murder.

(1) Subject to subsections (2) and (3) below, a person convicted of murder shall be sentenced to imprisonment for life.

(2) Where a person convicted of murder is under the age of 18 years he shall not be sentenced to imprisonment for life but to be detained without limit of time and shall be liable to be detained in such place, and under such conditions, as the Secretary of State may direct.

(3) Where a person convicted of murder has attained the age of 18 years but is under the age of 21 years he shall not be sentenced to imprisonment for life but to be detained in a young offenders institution and shall be liable to be detained for life.

(4) On sentencing any person convicted of murder a judge may make a recommendation as to the minimum period which should elapse before, under section 1(4) of the [M50]Prisoners and Criminal Proceedings (Scotland) Act 1993, the Secretary of State releases that person on licence.

(5) When making a recommendation under subsection (4) above, the judge shall state his reasons for so recommending.

(6) Notwithstanding subsection (2) of section 106 of this Act it shall be competent to appeal under paragraph (b) or (f) of subsection (1) of that section against a recommendation made under subsection (4) above; and for the purposes of such appeal (including the High Court's power of disposal under section 118(4)(b) of this Act) the recommendation shall be deemed part of the sentence passed on conviction.

Marginal Citations
M50 1993 c.9.

[F190 205B Minimum sentence for third conviction of certain offences relating to drug trafficking.

(1) This section applies where—

(a) a person is convicted on indictment in the High Court of a class A drug trafficking offence committed after the commencement of section 2 of the Crime and Punishment (Scotland) Act 1997;

(b) at the time when that offence was committed, he had attained the age of at least 18 years and had been convicted in any part of the United Kingdom of two other class A drug trafficking offences, irrespective of—

(i) whether either of those offences was committed before or after the commencement of section 2 of the Crime and Punishment (Scotland) Act 1997;

(ii) the court in which any such conviction was obtained; and

(iii) his age at the time of the commission of either of those offences; and

(c) one of the offences mentioned in paragraph (b) above was committed after he had been convicted of the other.

(2) Subject to subsection (3) below, where this section applies the court shall sentence the person—

(a) where he has attained the age of 21 years, to a term of imprisonment of at least seven years; and

(b) where he has attained the age of 18 years but is under the age of 21 years, to detention in a young offenders institution for a period of at least seven years.

(3) The court shall not impose the sentence otherwise required by subsection (2) above where it is of the opinion that there are specific circumstances which—

(a) relate to any of the offences or to the offender; and

(b) would make that sentence unjust.

(4) For the purposes of section 106(2) of this Act a sentence passed under subsection (2) above in respect of a conviction for a class A drug trafficking offence shall not be regarded as a sentence fixed by law for that offence.

(5) In this section "class A drug trafficking offence" means a drug trafficking offence committed in respect of a class A drug; and for this purpose—

"class A drug" has the same meaning as in the [M51]Misuse of Drugs Act 1971;

"drug trafficking offence" means a drug trafficking offence within the meaning of—

(i) the [M52]Drug Trafficking Act 1994;

(ii) the [M53]Proceeds of Crime (Scotland) Act 1995; or

(iii) the [M54]Proceeds of Crime (Northern Ireland) Order 1996.**]**

Textual Amendments

F190 S. 205B inserted (20.10.1997) by 1997 c. 48, **s. 2(1)**; S.I. 1997/2323, art. 3, **Sch. 1**

Marginal Citations

M51 1971 c.38.
M52 1994 c.37.
M53 1995 c.43
M54 S.I. 1996/1299 (N.I. 9).

[F191205C Meaning of "conviction" for purposes of sections 205A and 205B.

(1) For the purposes of paragraph (b) of subsection (1) of each of sections 205A and 205B of this Act "conviction" includes—

(a) a finding of guilt in respect of which the offender was admonished under section 181 of the [M55]Criminal Procedure (Scotland) Act 1975 (admonition); and

(b) a conviction for which an order is made placing the offender on probation,

and related expressions shall be construed accordingly.

(2) This subsection applies where a person has at any time been convicted of an offence under—

(a) section 70 of the [M56]Army Act 1955;

(b) section 70 of the [M57]Air Force Act 1955; or

(c) section 42 of the [M58]Naval Discipline Act 1957.

(3) Where subsection (2) above applies and the corresponding civil offence (within the meaning of the Act under which the offence was committed) was—

(a) a relevant offence within the meaning of section 205A of this Act; or

(b) a Class A drug trafficking offence within the meaning of section 205B of this Act,

that section shall have effect as if he had been convicted in England and Wales of the corresponding civil offence.**]**

Textual Amendments

F191 S. 205C inserted (20.10.1997 for specified purposes and otherwise prosp.) by 1997 c. 48, **ss. 3**, 65(2); S.I. 1997/2323, art. 3, **Sch. 1**

Marginal Citations

M55 1975 c. 21.
M56 1955 c.18.
M57 1955 c.19.
M58 1957 c. 53.

VALID FROM 08/10/2001

[F192 205D Only one sentence of imprisonment for life to be imposed in any proceedings

Where a person is convicted on the same indictment of more than one offence for which the court must impose or would, apart from this section, have imposed a sentence of imprisonment for life, only one such sentence shall be imposed in respect of those offences.]

Textual Amendments

F192 S. 205D inserted (8.10.2001) by 2001 asp 7, **s. 2(2)**; S.S.I. 2001/274, **art. 3(3)**

206 Minimum periods of imprisonment.

(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 mentioned in subsection (4) below 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 [M59]Prisons (Scotland) Act 1989.

(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" has the same meaning as in the [M60]Police (Scotland) Act 1967.

Marginal Citations

M59 1989 c.45.

M60 1967 c.77.

207 Detention of young offenders.

(1) It shall not be competent to impose imprisonment on a person under 21 years of age.

(2) Subject to **[**[F193]sections 205(2) and (3), 205A(2)(b) and 205B(2)(b)**]** of this Act and to subsections (3) and (4) below, a court may impose detention (whether by way of sentence or otherwise) on a person, who is not less than 16 but under 21 years of age, where but for subsection (1) above the court would have power to impose a period of imprisonment; and a period of detention imposed under this section on any person shall not **[**[F194]be less than the minimum nor more than**]**the maximum period of imprisonment which might otherwise have been imposed.

(3) The court shall not under subsection (2) above impose detention on an offender unless it is of the opinion that no other method of dealing with him is appropriate; and the court shall state its reasons for that opinion, and, except in the case of the High Court, those reasons shall be entered in the record of proceedings.

(4) To enable the court to form an opinion under subsection (3) above, it shall obtain from an officer of a local authority or otherwise such information as it can about the offender's circumstances; and it shall also take into account any information before it concerning the offender's character and physical and mental condition.

(5) A sentence of detention imposed under this section shall be a sentence of detention in a young offenders institution.

Textual Amendments

F193 Words in s. 207(2) substituted (20.10.1997 for specified purposes and otherwise*prosp.*) by 1997 c. 48, ss. 62(1), 65(2), **Sch. 1 para. 21(25)(a)**; S.I. 1997/2323, art. 3, **Sch. 1**

F194 Words in s. 207(2) substituted (20.10.1997 for specified purposes and otherwise*prosp.*) by 1997 c. 48, ss. 62(1), 65(2), **Sch. 1 para. 21(25)(b)**; S.I. 1997/2323, art. 3, **Sch. 1**

208 Detention of children convicted on indictment.

Subject to section 205 of this Act, where a child is convicted on indictment and the court is of the opinion that no other method of dealing with him is appropriate, it may sentence him to be detained for a period which it shall specify in the sentence; and the child shall during that period be liable to be detained in such place and on such conditions as the Secretary of State may direct.

209 Supervised release orders.

(1) Where a person is convicted of an offence and is sentenced to imprisonment for a term of not less than twelve months but less than four years, the court on passing sentence may, if it considers that it is necessary to do so to protect the public from serious harm from the offender on his release, make such order as is mentioned in subsection (3) below.

(2) A court shall, before making an order under subsection (1) above, consider a report by a relevant officer of a local authority about the offender and his circumstances and, if the court thinks it necessary, hear that officer.

(3) The order referred to in subsection (1) above (to be known as a "supervised release order") is that the person, during a relevant period—

(a) be under the supervision either of a relevant officer of a local authority or of a probation officer appointed for or assigned to a petty sessions area (such local authority or the justices for such area to be designated under section 14(4) or 15(1) of the [M61]Prisoners and Criminal Proceedings (Scotland) Act 1993);

(b) comply with;

(i) such requirements as may be imposed by the court in the order; and

(ii) such requirements as that officer may reasonably specify,

for the purpose of securing the good conduct of the person or preventing, or lessening the possibility of, his committing a further offence (whether or not an offence of the kind for which he was sentenced); and

(c) comply with the standard requirements imposed by virtue of subsection (4)(a)(i) below.

(4) A supervised release order—

(a) shall—

(i) without prejudice to subsection (3)(b) above, contain such requirements (in this section referred to as the "standard requirements"); and

(ii) be as nearly as possible in such form,

as may be prescribed by Act of Adjournal;

(b) for the purposes of any appeal or review constitutes part of the sentence of the person in respect of whom the order is made; and

(c) shall have no effect during any period in which the person is subject to a licence under Part I of the said Act of 1993.

(5) Before making a supervised release order as respects a person the court shall explain to him, in as straightforward a way as is practicable, the effect of the order and the possible consequences for him of any breach of it.

(6) The clerk of the court by which a supervised release order is made in respect of a person shall—

(a) forthwith send a copy of the order to the person and to the Secretary of State; and

(b) within seven days after the date on which the order is made, send to the Secretary of State such documents and information relating to the case and to the person as are likely to be of assistance to a supervising officer.

(7) In this section—

"relevant officer" has the same meaning as in Part I of the [M62]Prisoners and Criminal Proceedings (Scotland) Act 1993;

"relevant period" means such period as may be specified in the supervised release order, being a period—

(a) not exceeding twelve months after the date of the person's release; and

(b) no part of which is later than the date by which the entire term of imprisonment specified in his sentence has elapsed; and

"supervising officer" means, where an authority has or justices have been designated as is mentioned in subsection (3)(a) above for the purposes of the order, any relevant officer or, as the case may be, probation officer who is for the time being supervising for those purposes the person released.

(8) This section applies to a person sentenced under section 207 of this Act as it applies to a person sentenced to a period of imprisonment.

Extent Information

E1 S. 209(3)and(7) extend to G.B., see s. 309(4)

Marginal Citations

M61 1993 c.9.

M62 1993 c.9.

210 Consideration of time spent in custody.

(1) A court, in passing a sentence of imprisonment or detention on a person for an offence, shall—

(a) in determining the period of imprisonment or detention, have regard to any period of time spent in custody by the person on remand awaiting trial or sentence, or spent in custody awaiting extradition to the United Kingdom **[**[F195], or spent in hospital awaiting trial or sentence by virtue of an order made under section 52, 53 or 200 of this Act**]**;

(b) specify the date of commencement of the sentence; and

(c) if the 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, **[**[F196]; or

(iii) has spent a period of time in hospital awaiting trial or sentence by virtue of an order made under section 52, 53 or 200 of this Act,**]**

and the date specified under paragraph (b) above is not earlier than the date on which sentence was passed, state its reasons for not specifying an earlier date.

(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 he was extradited or having had an opportunity of leaving the United Kingdom; and

(b) he was for any period 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 [M63]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;

(d) in pursuance of arrangements with a foreign state in respect of which an Order in Council under section 2 of the [M64]Extradition Act 1870 is in force; or

(e) in pursuance of a warrant of arrest endorsed in the Republic of Ireland under the law of that country corresponding to the [M65]Backing of Warrants (Republic of Ireland) Act 1965.

Textual Amendments

F195 Words in s. 210(1) inserted (1.8.1997) by 1997 c. 48, **s. 12(a)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F196 S. 210(1)(c)(iii) and the preceding word ";or" inserted (1.8.1997) by 1997 c. 48, **s. 12(b)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

Marginal Citations

M63 1989 c.33.

M64 33 & 34 Vict. c.52.

M65 1965 c.45.

VALID FROM 30/09/1998

[F197210A Extended sentences for sex and violent offenders.

(1) Where a person is convicted on indictment of a sexual or violent offence, the court may, if it—

(a) intends, in relation to—

(i) a sexual offence, to pass a determinate sentence of imprisonment; or

(ii) a violent offence, to pass such a sentence for a term of four years or more; and

(b) considers that the period (if any) for which the offender would, apart from this section, be subject to a licence would not be adequate for the purpose of protecting the public from serious harm from the offender,

pass an extended sentence on the offender.

(2) An extended sentence is a sentence of imprisonment which is the aggregate of—

(a) the term of imprisonment ("the custodial term") which the court would have passed on the offender otherwise than by virtue of this section; and

(b) a further period ("the extension period") for which the offender is to be subject to a licence and which is, subject to the provisions of this section, of such length as the court considers necessary for the purpose mentioned in subsection (1)(b) above.

(3) The extension period shall not exceed, in the case of—

(a) a sexual offence, ten years; and

(b) a violent offence, five years.

(4) A court shall, before passing an extended sentence, consider a report by a relevant officer of a local authority about the offender and his circumstances and, if the court thinks it necessary, hear that officer.

(5) The term of an extended sentence passed for a statutory offence shall not exceed the maximum term of imprisonment provided for in the statute in respect of that offence.

(6) Subject to subsection (5) above, a sheriff may pass an extended sentence which is the aggregate of a custodial term not exceeding the maximum term of imprisonment which he may impose and an extension period not exceeding three years.

(7) The Secretary of State may by order—

(a) amend paragraph (b) of subsection (3) above by substituting a different period, not exceeding ten years, for the period for the time being specified in that paragraph; and

(b) make such transitional provision as appears to him to be necessary or expedient in connection with the amendment.

(8) The power to make an order under subsection (7) above shall be exercisable by statutory instrument; but no such order shall be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

(9) An extended sentence shall not be imposed where the sexual or violent offence was committed before the commencement of section 86 of the Crime and Disorder Act 1998.

(10) For the purposes of this section—

"licence" and "relevant officer" have the same meaning as in Part I of the [M66]Prisoners and Criminal Proceedings (Scotland) Act 1993;

"sexual offence" means—

(i) rape;

(ii) clandestine injury to women;

(iii) abduction of a woman or girl with intent to rape or ravish;

(iv) assault with intent to rape or ravish;

(v) indecent assault;

(vi) lewd, indecent or libidinous behaviour or practices;

(vii) shameless indecency;

(viii) sodomy;

(ix) an offence under section 170 of the [M67]Customs and Excise Management Act 1979 in relation to goods prohibited to be imported under section 42 of the [M68]Customs Consolidation Act 1876, but only where the prohibited goods include indecent photographs of persons;

(x) an offence under section 52 of the [M69]Civic Government (Scotland) Act 1982 (taking and distribution of indecent images of children);

(xi) an offence under section 52A of that Act (possession of indecent images of children);

(xii) an offence under section 1 of the [M70]Criminal Law (Consolidation) (Scotland) Act 1995 (incest);

(xiii) an offence under section 2 of that Act (intercourse with a stepchild);

(xiv) an offence under section 3 of that Act (intercourse with child under 16 by person in position of trust);

(xv) an offence under section 5 of that Act (unlawful intercourse with girl under 16);

(xvi) an offence under section 6 of that Act (indecent behaviour towards girl between 12 and 16);

(xvii) an offence under section 8 of that Act (abduction of girl under 18 for purposes of unlawful intercourse);

(xviii) an offence under section 10 of that Act (person having parental responsibilities causing or encouraging sexual activity in relation to a girl under 16); and

(xix) an offence under subsection (5) of section 13 of that Act (homosexual offences);

"imprisonment" includes—

(i) detention under section 207 of this Act; and

(ii) detention under section 208 of this Act; and

"violent offence" means any offence (other than an offence which is a sexual offence within the meaning of this section) inferring personal violence.

(11) Any reference in subsection (10) above to a sexual offence includes—

(a) a reference to any attempt, conspiracy or incitement to commit that offence; and

(b) except in the case of an offence in paragraphs (i) to (viii) of the definition of "sexual offence" in that subsection, a reference to aiding and abetting, counselling or procuring the commission of that offence.**]**

Textual Amendments

F197 S. 210A inserted (30.9.1998) by 1998 c. 37, **s. 86(1)**; S.I. 1998/2327, **art. 2(1)(s)** (subject to arts. 5-8)

Marginal Citations

M66 1993 c.9.
M67 1979 c.2.
M68 1876 c.36.
M69 1982 c.45.
M70 1995 c.39.

VALID FROM 27/06/2003

[F198210AExtended sentences for certain other offenders

Where a person is convicted on indictment of abduction but the offence is other than is mentioned in paragraph (iii) of the definition of "sexual offence" in

subsection (10) of section 210A of this Act, that section shall apply in relation to the person as it applies in relation to a person so convicted of a violent offence.**]**

Textual Amendments

F198 S. 210AA inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 20**, 89; S.S.I. 2003/288, **art. 2**, Sch.

VALID FROM 19/06/2006

[F199 Risk assessment

Textual Amendments

F199 Ss. 210B-210H and cross-headings inserted (19.6.2006 for specified purposes) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 1**, 89 (as amended with regards to ss. 210B, 210D and 210G (27.9.2005) by S.S.I. 2005/465, art. 2, **Sch. 1 para. 34(2)**); S.S.I. 2006/332, **art. 2**

210B Risk assessment order

(1) This subsection applies where it falls to the High Court to impose sentence on a person convicted of an offence other than murder and that offence—

(a) is (any or all)—

(i) a sexual offence (as defined in section 210A(10) of this Act);

(ii) a violent offence (as so defined);

(iii) an offence which endangers life; or

(b) is an offence the nature of which, or circumstances of the commission of which, are such that it appears to the court that the person has a propensity to commit any such offence as is mentioned in sub-paragraphs (i) to (iii) of paragraph (a) above.

(2) Where subsection (1) above applies, the court, at its own instance or (provided that the prosecutor has given the person notice of his intention in that regard) on the motion of the prosecutor, if it considers that the risk criteria may be met, shall make an order under this subsection (a "risk assessment order") unless—

(a) the court makes an interim compulsion order by virtue of section 210D(1) of this Act in respect of the person; or

(b) the person is subject to an order for lifelong restriction previously imposed.

(3) A risk assessment order is an order—

(a) for the convicted person to be taken to a place specified in the order, so that there may be prepared there—

(i) by a person accredited for the purposes of this section by the Risk Management Authority; and

(ii) in such manner as may be so accredited,

a risk assessment report (that is to say, a report as to what risk his being at liberty presents to the safety of the public at large); and

(b) providing for him to be remanded in custody there for so long as is necessary for those purposes and thereafter there or elsewhere until such diet as is fixed for sentence.

(4) On making a risk assessment order, the court shall adjourn the case for a period not exceeding ninety days.

(5) The court may on one occasion, on cause shown, extend the period mentioned in subsection (4) above by not more than ninety days; and it may exceptionally, where by reason of circumstances outwith the control of the person to whom it falls to prepare the risk assessment report (the "assessor"), or as the case may be of any person instructed under section 210C(5) of this Act to prepare such a report, the report in question has not been completed, grant such further extension as appears to it to be appropriate.

(6) There shall be no appeal against a risk assessment order or against any refusal to make such an order.

210C Risk assessment report

(1) The assessor may, in preparing the risk assessment report, take into account not only any previous conviction of the convicted person but also any allegation that the person has engaged in criminal behaviour (whether or not that behaviour resulted in prosecution and acquittal).

(2) Where the assessor, in preparing the risk assessment report, takes into account any allegation that the person has engaged in criminal behaviour, the report is to—

(a) list each such allegation;

(b) set out any additional evidence which supports the allegation; and

(c) explain the extent to which the allegation and evidence has influenced the opinion included in the report under subsection (3) below.

(3) The assessor shall include in the risk assessment report his opinion as to whether the risk mentioned in section 210B(3)(a) of this Act is, having regard to such standards and guidelines as are issued by the Risk Management Authority in that regard, high, medium or low.

(4) The assessor shall submit the risk assessment report to the High Court by sending it, together with such documents as are available to the assessor and are referred to in the report, to the Principal Clerk of Justiciary, who shall then send a copy of the report and of those documents to the prosecutor and to the convicted person.

(5) The convicted person may, during the period of his detention at the place specified in the risk assessment order, himself instruct the preparation (by a person other than the assessor) of a risk assessment report; and if such a report is so prepared then the person who prepares it shall submit it to the court by sending it, together with such documents as are available to him (after any requirement under subsection (4) above is met) and are referred to in the report, to the Principal Clerk of Justiciary, who shall then send a copy of it and of those documents to the prosecutor.

(6) When the court receives the risk assessment report submitted by the assessor a diet shall be fixed for the convicted person to be brought before it for sentence.

(7) If, within such period after receiving a copy of that report as may be prescribed by Act of Adjournal, the convicted person intimates, in such form, or as nearly as may be in such form, as may be so prescribed—

(a) that he objects to the content or findings of that report; and

(b) what the grounds of his objection are,

the prosecutor and he shall be entitled to produce and examine witnesses with regard to—

(i) that content or those findings; and

(ii) the content or findings of any risk assessment report instructed by the person and duly submitted under subsection (5) above.

210D Interim hospital order and assessment of risk

(1) Where subsection (1) of section 210B of this Act applies, the High Court, if—

(a) it may make an interim compulsion order in respect of the person under section 53 of this Act; and

(b) it considers that the risk criteria may be met,

shall make such an order unless the person is subject to an order for lifelong restriction previously imposed.

(2) Where an interim compulsion order is made by virtue of subsection (1) above, a report as to the risk the convicted person's being at liberty presents to the safety of the public at large shall be prepared by a person accredited for the purposes of this section by the Risk Management Authority and in such manner as may be so accredited.

(3) Section 210C(1) to (4) and (7)(except paragraph (ii)) of this Act shall apply in respect of any such report as it does in respect of a risk assessment report.

210E The risk criteria

For the purposes of sections 195(1), 210B(2), 210D(1) and 210F(1) and (3) of this Act, the risk criteria are that the nature of, or the circumstances of the commission of, the offence of which the convicted person has been found guilty either in themselves or as part of a pattern of behaviour are such as to demonstrate that there is a likelihood that he, if at liberty, will seriously endanger the lives, or physical or psychological well-being, of members of the public at large.

VALID FROM 20/06/2006

[F200 210EA Application of certain sections of this Act to proceedings under section 210C(7)

(1) Sections 271 to 271M, 274 to 275C and 288C to 288F of this Act (in this section referred to as the "applied sections") apply in relation to proceedings under section 210C(7) of this Act as they apply in relation to proceedings in or for the purposes of a trial, references in the applied sections to the "trial" and to the "trial diet" being construed accordingly.

(2) But for the purposes of this section the references—

(a) in sections 271(1)(a) and 271B(1)(b) to the date of commencement of the proceedings in which the trial is being held or is to be held; and

(b) in section 288E(2)(b) to the date of commencement of the proceedings,

are to be construed as references to the date of commencement of the proceedings in which the person was convicted of the offence in respect of which sentence falls to be imposed (such proceedings being in this section referred to as the "original proceedings").

(3) And for the purposes of this section any reference in the applied sections to—

(a) an "accused" (or to a person charged with an offence) is to be construed as a reference to the convicted person except that the reference in section 271(2)(e)(iii) to an accused is to be disregarded;

(b) an "alleged" offence is to be construed as a reference to any or all of the following—

(i) the offence in respect of which sentence falls to be imposed;

(ii) any other offence of which the convicted person has been convicted;

(iii) any alleged criminal behaviour of the convicted person; and

(c) a "complainer" is to be construed as a reference to any or all of the following—

(i) the person who was the complainer in the original proceedings;

(ii) in the case of any such offence as is mentioned in paragraph (b)(ii) above, the person who was the complainer in the proceedings relating to that offence;

(iii) in the case of alleged criminal behaviour if it was alleged behaviour directed against a person, the person in question.

(4) Where—

(a) any person who is giving or is to give evidence at an examination under section 210C(7) of this Act gave evidence at the trial in the original proceedings; and

(b) a special measure or combination of special measures was used by virtue of section 271A, 271C or 271D of this Act for the purpose of taking the person's evidence at that trial,

that special measure or, as the case may be, combination of special measures is to be treated as having been authorised, by virtue of the same section, to be used for the purpose of taking the person's evidence at or for the purposes of the examination.

(5) Subsection (4) above does not affect the operation, by virtue of subsection (1) above, of section 271D of this Act.**]**

Textual Amendments

F200 S. 210EA inserted (20.6.2006 for specified purposes) by Management of Offenders etc. (Scotland) Act 2005 (asp 14), **ss. 19**, 24; S.S.I. 2006/331, **art. 3(1)** (subject to art. 3(2))

VALID FROM 19/06/2006

Order for lifelong restriction etc.

210F Order for lifelong restriction

(1) The High Court, at its own instance or on the motion of the prosecutor, if it is satisfied, having regard to—

(a) a risk assessment report submitted under section 210C(4) or (5) of this Act;

(b) any report submitted by virtue of section 210D of this Act;

(c) any evidence given under section 210C(7) of this Act; and

(d) any other information before it,

that, on a balance of probabilities, the risk criteria are met, shall make an order for lifelong restriction in respect of the convicted person.

(2) An order for lifelong restriction constitutes a sentence of imprisonment, or as the case may be detention, for an indeterminate period.

(3) The prosecutor may, on the grounds that on a balance of probabilities the risk criteria are met, appeal against any refusal of the court to make an order for lifelong restriction.

210G Disposal of case where certain orders not made

(1) Where, in respect of a convicted person—

(a) a risk assessment order is not made under section 210B(2) of this Act, or (as the case may be) an interim compulsion order is not made by virtue of section 210D(1) of this Act, because the court does not consider that the risk criteria may be met; or

(b) the court considers that the risk criteria may be met but a risk assessment order, or (as the case may be) an interim compulsion order, is not so made because the person is subject to an order for lifelong restriction previously imposed,

the court shall dispose of the case as it considers appropriate.

(2) Where, in respect of a convicted person, an order for lifelong restriction is not made under section 210F of this Act because the court is not satisfied (in accordance with subsection (1) of that section) that the risk criteria are met, the court, in disposing of the case, shall not impose on the person a sentence of imprisonment for life, detention for life or detention without limit of time.

VALID FROM 19/06/2006

Report of judge

210H Report of judge

(1) This subsection applies where a person falls to be sentenced—

(a) in the High Court for an offence (other than murder) mentioned in section 210B(1) of this Act; or

(b) in the sheriff court for such an offence prosecuted on indictment.

(2) Where subsection (1) above applies, the court shall, as soon as reasonably practicable, prepare a report in writing, in such form as may be prescribed by Act of Adjournal—

(a) as to the circumstances of the case; and

(b) containing such other information as it considers appropriate,

but no such report shall be prepared if a report is required to be prepared under section 21(4) of the Criminal Justice (Scotland) Act 2003 (asp 7).**]**

Fines

211 Fines.

(1) Where an accused who is convicted on indictment of any offence (whether triable only on indictment or triable either on indictment or summarily other than by virtue of section 292(6) of this Act) would apart from this subsection be liable to a fine of or not exceeding a specified amount, he shall by virtue of this subsection be liable to a fine of any amount.

(2) Where any Act confers a power by subordinate instrument to make a person liable on conviction on indictment of any offence mentioned in subsection (1) above to a fine or a maximum fine of a specified amount, or which shall not exceed a specified amount, the fine which may be imposed in the exercise of that power shall by virtue of this subsection be a fine of an unlimited amount.

(3) Any sentence or decree for any fine or expenses pronounced by a sheriff court or district court may be enforced against the person or effects of any party against whom the sentence or decree was awarded—

(a) in the district where the sentence or decree was pronounced; or

(b) in any other such district.

(4) A fine imposed by the High Court shall be remitted for enforcement to, and shall be enforceable as if it had been imposed by—

(a) where the person upon whom the fine was imposed resides in Scotland, the sheriff for the district where that person resides; and

(b) where that person resides outwith Scotland, the sheriff before whom he was brought for examination in relation to the offence for which the fine was imposed.

(5) Any fine imposed in the High Court on the accused, and on a juror for non-attendance, and any forfeiture for non-appearance of a party, witness or juror in the High Court shall be payable to and recoverable by the Treasury, except where the High Court orders that the whole or any part of the fine shall be otherwise disposed of.

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

(7) A court 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.

Modifications etc. (not altering text)

C70 S. 211(3)-(6) applied (1.4.1996) by 1995 c. 43, ss. 14(1), 34, 50(2), **Sch. 1 para. 4(4)**
S. 211(3)-(6) applied (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), **ss. 118(1)(2)(a)**, 458; S.S.I. 2003/210, **art. 2** (subject to transitional provisions in arts. 3-7)

C71 S. 211(5) modified (19.2.2001) by 2000 c. 11, s. 23, **Sch. 4 para. 16(3)**; S.I. 2001/421, **art. 2**

212 Fines in summary proceedings.

(1) 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 young offenders institution in default of payment of the fine, may, unless the court otherwise directs and subject to subsection (2) below, be applied towards payment of the fine, and the surplus if any shall be returned to him.

(2) Money shall not be applied as mentioned in subsection (1) above 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, considers 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 it 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 that time, that any sum of money which has 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 that person, may apply to such court either orally or in writing for a direction that the 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 has been found on his person.

(7) A notice in the form prescribed by Act of Adjournal, or as nearly as may be in such form, 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.

213 Remission of fines.

(1) A fine may at any time be remitted in whole or in part by—

(a) in a case where a transfer of fine order under section 222 of this Act is effective and the court by which payment is enforceable is, in terms of the order, a court of summary jurisdiction in Scotland, that court; or

(b) in any other case, the court which imposed the fine or, where that court was the High Court, by which payment was first enforceable.

(2) Where the court remits the whole or part of a fine after imprisonment has been imposed under section 214(2) or (4) of this Act, it shall also remit the whole period of imprisonment or, as the case may be, reduce the period by an amount which bears the same proportion to the whole period as the amount remitted bears to the whole fine.

(3) The power conferred by subsection (1) above shall be exercisable without requiring the attendance of the accused.

214 Fines: time for payment and payment by instalments.

(1) Where a court has imposed a fine on an offender or ordered him to find caution the court shall, subject to subsection (2) below, 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 section and section 216 of this Act 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 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, the court 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 has imposed imprisonment in accordance with subsection (4) above, 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 the court to order a fine to be recovered by civil diligence.

(7) Where time has been allowed for payment of a fine imposed by the court, it may, 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.

(8) Without prejudice to subsection (2) above, where a court 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.

(9) Where the court has ordered payment of a fine by instalments it may—

(a) allow further time for payment of any instalment thereof;

(b) order payment thereof by instalments of lesser amounts, or at longer intervals, than those originally fixed,

and the powers conferred by this subsection shall be exercisable without requiring the attendance of the accused.

Modifications etc. (not altering text)

C72 S. 214 applied (with modifications) (1.4.1996) by 1995 c. 43, **ss. 14(2)(a)**, 50(2)

C73 S. 214(2) modified (1.4.1996) by 1995 c. 43, **ss. 15(2)**, 50(2)

C74 S. 214(4)-(6) applied (with modifications) (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), **ss. 118(1)(2)(b)**, 458; S.S.I. 2003/210, **art. 2** (with transitional provisions in arts. 3-7)

215 Application for further time to pay fine.

(1) An application by an offender for further time in which to pay a fine imposed on him by a court, or of instalments thereof, shall be made, subject to subsection (2) below, to that court.

(2) Where a transfer of fine order has been made under section 222 of this Act, section 90 of the [M71]Magistrates' Courts Act 1980 or Article 95 of the [M72]Magistrates' Courts (Northern Ireland) Order 1981, an application under subsection (1) above 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.

(3) A court to which an application is made under this section 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.

(4) An application made under this section may be made orally or in writing.

Modifications etc. (not altering text)

C75 S. 215 applied (with modifications) (1.4.1996) by 1995 c. 43, **ss. 14(2)(b)**, 50(2)

Marginal Citations

M71 1980 c.43.

M72 S.I. 1981/1675 (N.I. 26)

216 Fines: restriction on imprisonment for default.

(1) Where a court has imposed a fine or ordered the finding of caution without imposing imprisonment in default of payment, subject to subsection (2) below, it shall not impose imprisonment on an offender for failing to make payment of the fine or, as the case may be, to find caution, unless on an occasion subsequent to that sentence the court has enquired into in his presence the reason why the fine has not been paid or, as the case may be, caution has not been found.

(2) Subsection (1) above shall not apply where the offender is in prison.

(3) A court 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.

(4) 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.

(5) The citation of an offender to appear before a court in terms of subsection (3)(a) above shall be effected in like manner, *mutatis mutandis*, as the citation of an accused to a sitting or diet of the court under section 141 of this Act, and—

(a) 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

(b) the forms relating to the citation of an accused shall not apply to such citation.

(6) The following matters shall be, or as nearly as may be, in such form as is prescribed by Act of Adjournal—

(a) the citation of an offender under this section;

(b) if the citation of the offender is effected by an officer of law, the written execution, if any, of that officer of law;

(c) a warrant of apprehension issued by a court under subsection (4) above; and

(d) the minute of procedure in relation to an enquiry into the means of an offender under this section.

(7) Where a child would, if he were an adult, be liable to be imprisoned in default of payment of any fine 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.

Modifications etc. (not altering text)

C76 S. 216 applied (with modifications) (1.4.1996) by 1995 c. 43, **ss. 14(2)(c)**, 50(2)
S. 216 applied (with modifications) (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), **ss. 118(1)(2)(c)**, 458; S.S.I. 2003/210, **art. 2** (with transitional provisions in arts. 3-7)

C77 S. 216(7) modified (1.4.1997) by S.I. 1996/3255, **reg. 14(1)**

217 Fines: supervision pending payment.

(1) Where an offender has been allowed time for payment of a fine, 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, in this section referred to as the

"supervising officer", 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 subsection (1) above 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 subsection (3) below.

(3) An order under this section shall cease to have effect on the making of a transfer of fine order under section 222 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, the court shall not order the form of detention appropriate to him in default of payment of the fine unless—

(a) he has been placed under supervision in respect of the fine; or

(b) the court is satisfied that it is impracticable to place him under supervision.

(5) Where a court, on being satisfied as mentioned in subsection (4)(b) above, 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 before doing so it has—

(a) taken such steps as may be reasonably practicable to obtain from the supervising officer a report, which may be oral, on the offender's conduct and means, and has considered any such report; and

(b) in a case where an enquiry is required by section 216 of this Act, considered such enquiry.

(7) When a court appoints a different supervising officer under subsection (1) above, a notice shall be sent by the clerk of the court to the offender in such form, as nearly as may be, as is prescribed by Act of Adjournal.

(8) The supervising officer shall communicate with the offender with a view to assisting and advising him in regard to payment of the fine, and unless the fine or any instalment thereof is paid to the clerk of the court within the time allowed by the court for payment, the supervising officer shall report to the court without delay after the expiry of such time, as to the conduct and means of the offender.

Modifications etc. (not altering text)

C78 S. 217 applied (with modifications) (1.4.1996) by 1995 c. 43, **ss. 14(2)(d)**, 50(2)
S. 217 applied (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), **ss. 118(1)(2)(d)**, 458; S.S.I. 2003/210, **art.2** (with transitional provisions in arts 3-7)

218 Fines: supplementary provisions as to payment.

(1) Where under the provisions of section 214 or 217 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 said sections 214 and 217 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.

(3) Where a warrant has been issued for the apprehension of an offender for non-payment of a fine, the offender may, notwithstanding section 211(6) of this Act, pay such fine in full to a constable; and the warrant shall not then be enforced and the constable shall remit the fine to the clerk of court.

Modifications etc. (not altering text)

C79 S. 218(2)(3) applied (with modifications) (1.4.1996) by 1995 c. 43, **ss. 14(2)(e)**, 50(2)
S. 218(2)(3) applied (24.3.2006) by Proceeds of Crime Act 2002 (c. 29), **ss. 118(1)(2)(e)**, 458; S.S.I. 2003/210, **art. 2** (with transitional provisions in arts. 3-7)

219 Fines: periods of imprisonment for non-payment.

(1) Subject to sections 214 to 218 of this Act—

(a) a court may, when imposing a fine, impose a period of imprisonment in default of payment; or

(b) where no order has been made under paragraph (a) above and a person fails to pay a fine, or any part or instalment of a fine, by the time ordered by the court (or, where section 214(2) of this Act applies, immediately) the court may, subject to section 235(1) of this Act, impose a period of imprisonment for such failure either with immediate effect or to take effect in the event of the person failing to pay the fine or any part or instalment of it by such further time as the court may order,

whether or not the fine is imposed under an enactment which makes provision for its enforcement or recovery.

(2) Subject to the following subsections of this section, the maximum period of imprisonment which may be imposed under subsection (1) above or for failure to find caution, shall be as follows—

Amount of Fine or Caution	Maximum Period of Imprisonment
Not exceeding £200.....	7 days
Exceeding £200 but not exceeding £500.....	14 days
Exceeding £500 but not exceeding £1,000.....	28 days
Exceeding £1,000 but not exceeding £2,500.....	45 days
Exceeding £2,500 but not exceeding £5,000.....	3 months
Exceeding £5,000 but not exceeding £10,000.....	6 months

Exceeding £10,000 but not exceeding £20,000.....	12 months
Exceeding £20,000 but not exceeding £50,000.....	18 months
Exceeding £50,000 but not exceeding £100,000.....	2 years
Exceeding £100,000 but not exceeding £250,000.....	3 years
Exceeding £250,000 but not exceeding £1 Million.....	5 years
Exceeding £1 Million.....	10 years

(3) Where an offender is fined on the same day before the same court for offences charged in the same indictment or complaint or in separate indictments or complaints, the amount of the fine shall, for the purposes of this section, be taken to be the total of the fines imposed.

(4) Where a court has imposed a period of imprisonment in default of payment of a fine, and—

(a) an instalment of the fine is not paid at the time ordered; or

(b) part only of the fine has been paid within the time allowed for payment,

the offender shall be liable to imprisonment for a period which bears to the period so imposed the same proportion, as nearly as may be, as the amount outstanding at the time when warrant is issued for imprisonment of the offender in default bears to the original fine.

(5) Where no period of imprisonment in default of payment of a fine has been imposed and—

(a) an instalment of the fine is not paid at the time ordered; or

(b) part only of the fine has been paid within the time allowed for payment,

the offender shall be liable to imprisonment for a maximum period which bears, as nearly as may be, the same proportion to the maximum period of imprisonment which could have been imposed by virtue of the Table in subsection (2) above in default of payment of the original fine as the amount outstanding at the time when he appears before the court bears to the original fine.

(6) 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.

(7) The provisions of this section shall be without prejudice to the operation of section 220 of this Act.

(8) Where in any case—

(a) the sheriff considers that the imposition of imprisonment for the number of years for the time being specified in section 3(3) of this Act would be inadequate; and

(b) the maximum period of imprisonment which may be imposed under subsection (1) above (or under that subsection as read with either or both of sections 252(2) of this Act and section 14(2) of the [M73]Proceeds of Crime (Scotland) Act 1995) exceeds that number of years,

he shall remit the case to the High Court for sentence.

Modifications etc. (not altering text)
C80 S. 219 applied (with modifications) (1.4.1996) by 1995 c. 43, **ss. 14(2)(f)**, 50(2)

Marginal Citations
M73 1993 c.43.

220 Fines: part payment by prisoners.

(1) Where a person committed to prison or otherwise detained for failure to pay a fine imposed by a court pays to the governor of the prison, under conditions prescribed by rules made under the [M74]Prisons (Scotland) Act 1989, any sum in part satisfaction of the fine, the term of imprisonment shall be reduced (or as the case may be further reduced) by a number of days bearing as nearly as possible the same proportion to such term as the sum so paid bears to the amount of the fine outstanding at the commencement of the imprisonment.

(2) The day on which any sum is paid as mentioned in subsection (1) above shall not be regarded as a day served by the prisoner as part of the said term of imprisonment.

(3) All sums paid under this section shall be handed over on receipt by the governor of the prison to the clerk of the court in which the conviction was obtained, and thereafter paid and applied *pro tanto* in the same manner and for the same purposes as sums adjudged to be paid by the conviction and sentence of the court, and paid and recovered in terms thereof, are lawfully paid and applied.

(4) 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.

Modifications etc. (not altering text)
C81 S. 220 applied (with modifications) (1.4.1996) by 1995 c. 43, **ss. 14(2)(g)**, 50(2)
S. 220 applied (with modifications) (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), **ss. 118(1)(2)(g)**, 458; S.S.I. 2003/210, **art. 2** (with transitional provisions in arts. 3-7)

Marginal Citations
M74 1989 c.45.

221 Fines: recovery by civil diligence.

(1) Where any fine falls to be recovered by civil diligence in pursuance of this Act or in any case in which a court 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 a

warrant for civil diligence in a form prescribed by Act of Adjournal which shall have the effect of authorising—

(a) the charging of the person who has been fined to pay the fine within the period specified in the charge and, in the event of failure to make such payment within that period, the execution of an earnings arrestment and the poinding of articles belonging to him and, if necessary for the purpose of executing the poinding, the opening of shut and lockfast places;

(b) an arrestment other than an arrestment of earnings in the hands of his employer,

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 in a summary cause.

(2) Subject to subsection (3) below, proceedings by civil diligence under this section may be taken at any time after the imposition of the fine to which they relate.

(3) No such proceedings shall be authorised after the offender has been imprisoned in consequence of his having defaulted in payment of the fine.

(4) Where proceedings by civil diligence for the recovery of a fine or caution are taken, imprisonment for non-payment of the fine or for failure to find such caution shall remain competent and such proceedings may be authorised after the court has imposed imprisonment for, or in the event of, the non-payment or the failure but before imprisonment has followed such imposition.

Modifications etc. (not altering text)
C82 S. 221 applied (with modifications) (1.4.1996) by 1995 c. 43, **ss. 14(2)(h)**, 50(2)

222 Transfer of fine orders.

(1) Where a court 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 in Scotland; or

(b) in any petty sessions area in England and Wales; or

(c) in any petty sessions district in Northern Ireland,

the court may order that payment of the fine shall be enforceable by that other court or in that petty sessions area or petty sessions district 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 or petty sessions district 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) Subject to subsections (4) and (5) below, 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) the court specified in a transfer of fine order is satisfied, after inquiry, that the offender is not residing within the jurisdiction of that court; and

(b) the clerk of that court, within 14 days of receiving the notice required by section 223(1) of this Act, sends to the clerk of the court which made the order notice to that effect,

the order shall cease to have effect.

(5) Where a transfer of fine order ceases to have effect by virtue of subsection (4) above, the functions referred to in subsection (3) above shall again be exercisable by the court which made the order or, as the case may be, by the clerk of that court.

(6) Where a transfer of fine order under this section, section 90 of the [M75]Magistrates' Courts Act 1980 or Article 95 of the [M76]Magistrates' Courts (Northern Ireland) Order 1981 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, the said Act of 1980 or the said Order of 1981 in respect of the fine or the sum before the making of the transfer of fine order had been made by that court.

(7) The functions of the court to which subsection (6) above relates shall be deemed to include the court's power to apply to the Secretary of State under any regulations made by him under section 24(1)(a) of the [M77]Criminal Justice Act 1991 (power to deduct fines etc from income support).

(8) Where a transfer of fine order under section 90 of the Magistrates' Courts Act 1980, Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981, or this section provides for the enforcement by a sheriff court in Scotland of a fine imposed by the Crown Court, 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 [M78]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 219 of this Act.

Modifications etc. (not altering text)

C83 S. 222 applied (with modifications) (1.4.1996) by 1995 c. 43, **ss. 14(2)(i)**, 50(2)
S. 222 applied (with modifications) (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), **ss. 118(1)(2)(i)**, 458; S.S.I. 2003/210, **art. 2** (with transitional provisions in arts. 3-7)

Marginal Citations

M75 1980 c.43.
M76 S.I. 1981/1675
M77 1991 c.53.
M78 1973 c.62.

223 Transfer of fines: procedure for clerk of court.

(1) Where a court makes a transfer of fine order under section 222 of this Act, the clerk of the court shall send to the clerk of the court specified in the order—

(a) a notice in the form prescribed by Act of Adjournal, or as nearly as may be in such form;

(b) a statement of the offence of which the offender was convicted; and

(c) a statement of the steps, if any, 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 made the order shall send to the clerk of the court by which the fine was imposed a copy of the notice sent to the clerk of the court specified in the order.

(3) The clerk of court specified in a transfer of fine order shall, as soon as may be after he has received the notice mentioned in subsection (1)(a) above, send an intimation to the offender in the form prescribed by Act of Adjournal or as nearly as may be in such form.

(4) The clerk of 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 has been enforced otherwise than by payment of the fine, he shall inform the clerk of court how the sentence was enforced.

Modifications etc. (not altering text)

C84 S. 223 applied (1.4.1996) by 1995 c. 43, **ss. 14(2)(j)**, 50(2)
S. 223 applied (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), **ss. 118(1)(2)(j)**, 458; S.S.I. 2003/210, **art. 2** (with transitional provisions in arts. 3-7)

VALID FROM 12/10/2009

I[F201 Fines: discharge from imprisonment and penalties

Textual Amendments

F201 Ss. 223A-223T and cross-headings inserted (12.10.2009) by The Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009 (S.S.I. 2009/342), **art. 3** (with art. 2)

224 Discharge from imprisonment to be specified.

All warrants of imprisonment in default of payment of a fine, or on failure to find caution, shall specify a period at the expiry of which the person sentenced shall be discharged, notwithstanding the fine has not been paid, or caution found.

Modifications etc. (not altering text)

C85 S. 224 applied (1.4.1996) by 1995 c. 43, **ss. 14(2)(k)**, 50(2)
S. 224 applied (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), **ss. 118(1)(2)(k)**, 458; S.S.I. 2003/210, **art. 2** (with transitional provisions in arts. 3-7)

[F201 225 Penalties: standard scale, prescribed sum and uprating.

(1) There shall be a standard scale of fines for offences triable only summarily, which shall be known as "the standard scale".

(2) The standard scale is shown below—

Level on the scale	Amount of Fine
1	£ 200
2	£ 500
3	£1,000
4	£2,500
5	£5,000

(3) Any reference in any enactment, whenever passed or made, to a specified level on the standard scale shall be construed as referring to the amount which corresponds to that level on the standard scale referred to in subsection (2) above.

(4) If it appears to the Secretary of State that there has been a change in the value of money since the relevant date, he may by order substitute for the sum or sums for the time being specified in the provisions mentioned in subsection (5) below such other sum or sums as appear to him justified by the change.

(5) The provisions referred to in subsection (4) above are—

(a) subsection (2) above;

(b) subsection (8) below;

(c) section 219(2) of this Act;

(d) column 5 or 6 of Schedule 4 to the M79Misuse of Drugs Act 1971 so far as the column in question relates to the offences under provisions of that Act specified in column 1 of that Schedule in respect of which the maximum fines were increased by Part II of Schedule 8 to the M80Criminal Justice and Public Order Act 1994.

(6) In subsection (4) above "the relevant date" means—

(a) in relation to the first order made under that subsection, the date the last order was made under section 289D(1) of the M81Criminal Procedure (Scotland) Act 1975; and

(b) in relation to each subsequent order, the date of the previous order.

(7) An order under subsection (4) above—

(a) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament and may be revoked by a subsequent order thereunder; and

(b) without prejudice to Schedule 14 to the M82Criminal Law Act 1977, shall not affect the punishment for an offence committed before that order comes into force.

(8) In this Act "the prescribed sum" means £5,000 or such sum as is for the time being substituted in this definition by an order in force under subsection (4) above.**]**

Marginal Citations

M79 1971 c.38.
M80 1994 c.33.
M81 1975 c.21.
M82 1977 c.45.

226 Penalties: exceptionally high maximum fines.

(1) The Secretary of State may by order amend an enactment specifying a sum to which this subsection applies so as to substitute for that sum such other sum as appears to him—

(a) to be justified by a change in the value of money appearing to him to have taken place since the last occasion on which the sum in question was fixed; or

(b) to be appropriate to take account of an order altering the standard scale which has been made or is proposed to be made.

(2) Subsection (1) above applies to any sum which—

(a) is higher than level 5 on the standard scale; and

(b) is specified as the fine or the maximum fine which may be imposed on conviction of an offence which is triable only summarily.

(3) The Secretary of State may by order amend an enactment specifying a sum to which this subsection applies so as to substitute for that sum such other sum as appears to him—

(a) to be justified by a change in the value of money appearing to him to have taken place since the last occasion on which the sum in question was fixed; or

(b) to be appropriate to take account of an order made or proposed to be made altering the statutory maximum.

(4) Subsection (3) above applies to any sum which—

(a) is higher than the statutory maximum; and

(b) is specified as the maximum fine which may be imposed on summary conviction of an offence triable either on indictment or summarily.

(5) An order under this section—

(a) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and

(b) shall not affect the punishment for an offence committed before that order comes into force.

(6) In this section "enactment" includes an enactment contained in an Act or subordinate instrument passed or made after the commencement of this Act.**]**

VALID FROM 10/03/2008

Enforcement of fines etc.: fines enforcement officers

[F202 226A Fines enforcement officers

(1) The Scottish Ministers may authorise persons (including classes of person) to act as fines enforcement officers for any or all of the purposes of this section and sections 226B to 226H of this Act.

(2) A FEO has the general functions of—

(a) providing information and advice to offenders as regards payment of relevant penalties;

(b) securing compliance of offenders with enforcement orders (including as varied under section 226C(1) of this Act).

(3) Where an offender is subject to two or more relevant penalties, a FEO—

(a) in exercising the function conferred by subsection (2)(b) above;

(b) in considering whether or not to vary an enforcement order under section 226C(1) of this Act,

shall have regard to that fact and to the total amount which the offender is liable to pay in respect of them.

(4) Where an enforcement order as respects an offender has been made in a sheriff court district other than that in which the offender resides, a FEO for the district in which the offender resides may (whether or not those districts are in the same sheriffdom) take responsibility for exercising functions in relation to the order.

(5) A FEO taking responsibility for exercising functions by virtue of subsection (4) above is to notify that fact to—

(a) the offender; and

(b) any FEO for the district in which the enforcement order was made.

(6) Notification under subsection (5)(b) above has the effect of transferring functions in relation to the enforcement order—

(a) from any FEO for the district in which the order was made; and

(b) to a FEO for the district in which the offender resides.

(7) The Scottish Ministers may by regulations make further provision as to FEOs and their functions.

(8) Regulations under subsection (7) above are not made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, the Scottish Parliament.

Textual Amendments

F202 Ss. 226A-226I and preceding cross-heading inserted (10.3.2008 for certain purposes and otherwise prosp.) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 55**, 84; S.I. 2008/42, **art. 3**, Sch.

226B Enforcement orders

(1) When a court grants time to pay (or further time to pay) a relevant penalty (or an instalment of it) under section 214 or 215 of this Act, the court shall make an enforcement order under this subsection in relation to payment of the penalty.

(2) Despite subsection (1) above, a court need not make an enforcement order where it considers that it would not be appropriate to do so in the circumstances of the case.

(3) Where, by virtue of subsection (2) above, a court does not make an enforcement order under subsection (1) above, it may subsequently make an enforcement order under that subsection in relation to payment of the penalty.

(4) Where—

(a) a person has accepted (or is deemed to have accepted)—

(i) a fixed penalty offer under section 302(1) of this Act; or

(ii) a compensation offer under section 302A(1) of this Act; and

(b) payment (or payment of an instalment) has not been made as required by the offer,

the relevant court may make an enforcement order under this subsection in relation to the payment due.

(5) Where—

(a) a person is liable to pay—

(i) a fixed penalty notice given under section 54 (giving notices for fixed penalty offences), or section 62 (fixing notices to vehicles) of the Road Traffic Offenders Act 1988 (c. 53), which has been registered under section 71 of that Act; or

(ii) by virtue of section 131(5) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), a fixed penalty notice given under section 129 (fixed penalty notices) of that Act; and

(b) payment (or payment of an instalment) has not been made as required by the penalty,

the relevant court may make an enforcement order under this subsection in relation to the payment due.

(6) Where there is transferred to a court in Scotland a fine—

(a) imposed by a court in England and Wales; and

(b) in relation to which a collection order (within the meaning of Part 4 of Schedule 5 to the Courts Act 2003 (c. 39)) has been made,

the relevant court may make an enforcement order under this subsection in relation to payment of the fine.

(7) An enforcement order under subsection (4), (5) or (6) above may be made—

(a) on the oral or written application of the clerk of court; and

(b) without the offender being present.

(8) An enforcement order shall—

(a) state the amount of the relevant penalty;

(b) require payment of the relevant penalty in accordance with—

(i) such arrangements as to the amount of the instalments by which the relevant penalty should be paid and as to the intervals at which such instalments should be paid;

(ii) such other arrangements,

as the order may specify;

(c) provide contact details for the FEO dealing with the enforcement order;

(d) explain the effect of the enforcement order.

(9) Where a court makes (or is to make) an enforcement order in relation to a fine—

(a) a court may not impose imprisonment—

(i) under section 214(4) of this Act; or

(ii) under section 219(1) of this Act,

in respect of the fine;

(b) a court may not—

(i) allow further time for payment under subsection (9)(a) of section 214 of this Act; or

(ii) make an order under subsection (9)(b) of that section,

in respect of the fine;

(c) the offender may not make an application under section 215(1) of this Act in respect of the fine.

(10) Paragraphs (a) to (c) of subsection (9) above apply for so long as the enforcement order continues to have effect.

(11) An enforcement order ceases to have effect if—

(a) the relevant penalty is paid (including by application of any proceeds of enforcement action); or

(b) it is revoked under section 226G(9)(a) of this Act.

226C Variation for further time to pay

(1) A FEO dealing with an enforcement order may—

(a) on the application of the offender; and

(b) having regard to the circumstances of the offender,

vary the arrangements specified in the order for payment of the relevant penalty.

(2) That is, by—

(a) allowing the offender further time to pay the penalty (or any instalment of it);

(b) allowing the offender to pay the penalty by instalments of such lesser amounts, or at such longer intervals, as those specified in the enforcement order.

(3) An application by an offender for the purpose of subsection (1) above may be made orally or in writing.

(4) A FEO shall notify the offender concerned of any—

(a) variation under subsection (1) above;

(b) refusal of an application for variation under that subsection.

Textual Amendments

F202 Ss. 226A-226I and preceding cross-heading inserted (10.3.2008 for certain purposes and otherwise prosp.) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 55**, 84; S.I. 2008/42, **art. 3**, Sch.

226D Seizure of vehicles

(1) A FEO may, for the purpose mentioned in subsection (2) below, direct that a motor vehicle belonging to the offender be—

(a) immobilised;

(b) impounded.

(2) The purpose is of obtaining the amount of a relevant penalty which has not been paid in accordance with an enforcement order.

(3) For the purposes of this section—

(a) a vehicle belongs to an offender if it is registered under the Vehicle Excise and Registration Act 1994 (c. 22) in the offender's name;

(b) a reference—

(i) to a vehicle being immobilised is to its being fitted with an immobilisation device in accordance with regulations made under subsection (12) below;

(ii) to a vehicle being impounded is to its being taken to a place of custody in accordance with regulations made under that subsection;

(c) a direction under subsection (1) above is referred to as a "seizure order".

(4) A FEO shall notify the offender concerned that a seizure order has been carried out.

(5) Where—

(a) a seizure order has been carried out; and

(b) at the end of such period as may be specified in regulations made under subsection (12) below, any part of the relevant penalty remains unpaid,

a FEO may apply to the relevant court for an order under subsection (6) below.

(6) The court may make an order under this subsection—

(a) for the sale or other disposal of the vehicle in accordance with regulations made under subsection (12) below;

(b) for any proceeds of the disposal to be applied in accordance with regulations made under that subsection in payment of or towards the unpaid amount of the relevant penalty;

(c) for any remainder of those proceeds to be applied in accordance with regulations made under that subsection in payment of or towards any reasonable expenses incurred by the FEO in relation to the seizure order;

(d) subject to paragraphs (b) and (c) above, for any balance to be given to the offender.

(7) Where, before a vehicle which is the subject of a seizure order is disposed of—

(a) a third party claims to own the vehicle; and

(b) either—

(i) a FEO is satisfied that the claim is valid (and that there are no reasonable grounds for believing that the claim is disputed by the offender or any other person from whose possession the vehicle was taken); or

(ii) the sheriff, on an application by the third party, makes an order that the sheriff is so satisfied,

the seizure order ceases to have effect.

(8) An application for the purposes of subsection (7)(b)(ii) above does not preclude any other proceedings for recovery of the vehicle.

(9) A person commits an offence if, without lawful authority or reasonable excuse, the person removes or attempts to remove—

(a) an immobilisation device fitted;

(b) a notice fixed,

to a motor vehicle in pursuance of a seizure order.

(10) A person guilty of an offence under subsection (9) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(11) A seizure order must not be made in respect of a vehicle—

(a) which displays a valid disabled person's badge; or

(b) in relation to which there are reasonable grounds for believing that it is used primarily for the carriage of a disabled person.

(12) The Scottish Ministers may make regulations for the purposes of and in connection with this section.

(13) Regulations under subsection (12) above may, in particular, include provision—

(a) as to circumstances in which a seizure order may (or may not) be made;

(b) as regards the value of a vehicle seizable compared to the amount of a relevant penalty which is unpaid;

(c) by reference to subsection (3)(a) and (7) above or otherwise, for protecting the interests of owners of vehicles apart from offenders;

(d) relating to subsections (3)(b), (5)(b) and (6) above;

(e) as to the fixing of notices to vehicles to which an immobilisation device has been fitted;

(f) as to the keeping and release of vehicles immobilised or impounded (including as to conditions of release);

(g) as to the payment of reasonable fees, charges or other costs in relation to—

(i) the immobilisation or impounding of vehicles;

(ii) the keeping, release or disposal of vehicles immobilised or impounded.

(14) Regulations under subsection (12) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.

(15) In this section—

"disabled person's badge" means a badge issued, or having effect as if issued, under regulations made under section 21 of the Chronically Sick and Disabled Persons Act 1970 (c. 44);

"immobilisation device" has the same meaning as in section 104(9) of the Road Traffic Regulation Act 1984 (c. 27);

"motor vehicle" means a mechanically propelled vehicle intended or adapted for use on roads (except that section 189 of the Road Traffic Act 1988 (c. 52) applies for the purposes of this section as it applies for the purposes of that Act).

Textual Amendments

F202 Ss. 226A-226I and preceding cross-heading inserted (10.3.2008 for certain purposes and otherwise prosp.) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 55**, 84; S.I. 2008/42, **art. 3**, Sch.

226E Deduction from benefits

(1) A FEO may, for the purpose mentioned in subsection (2) below, request the relevant court to make an application under regulations made under section 24(1)(a) of the Criminal Justice Act 1991 (c. 53) for deductions as described in that section.

(2) The purpose is of obtaining the amount of a relevant penalty which has not been paid in accordance with an enforcement order.

Textual Amendments

F202 Ss. 226A-226I and preceding cross-heading inserted (10.3.2008 for certain purposes and otherwise prosp.) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 55**, 84; S.I. 2008/42, **art. 3**, Sch.

226F Powers of diligence

(1) When a court makes an enforcement order, it shall grant a warrant for civil diligence in the form prescribed by Act of Adjournal.

(2) A warrant granted under subsection (1) above authorises a FEO to execute the types of diligence mentioned in subsection (3) below for the purpose mentioned in subsection (4) below.

(3) The types of diligence are—

(a) arrestment of earnings; and

(b) arrestment of funds standing in accounts held at any bank or other financial institution.

(4) The purpose is of obtaining the amount of a relevant penalty which has not been paid in accordance with an enforcement order.

(5) The types of diligence mentioned in subsection (3) above may (whatever the amount of the relevant penalty concerned) be executed by an FEO in the same manner as if authorised by a warrant granted by the sheriff in a summary cause.

(6) However, the power of FEOs to execute the types of diligence mentioned in subsection (3) above is subject to such provision as the Scottish Ministers may by regulations make.

(7) Provision in regulations under subsection (6) above may, in particular—

(a) specify circumstances in which the types of diligence mentioned in subsection (3) above are (or are not) to be executed by a FEO;

(b) modify the application of any enactment (including subsection (5) above) or rule of law applying in relation to those types of diligence in so far as they may be executed by a FEO.

(8) Regulations under subsection (6) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.

Textual Amendments

F202 Ss. 226A-226I and preceding cross-heading inserted (10.3.2008 for certain purposes and otherwise prosp.) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 55**, 84; S.I. 2008/42, **art. 3**, Sch.

226G Reference of case to court

(1) A FEO may refer an enforcement order to the relevant court where—

(a) the FEO believes that payment of a relevant penalty, or any remaining part of a relevant penalty, to which an enforcement order relates is unlikely to be obtained;

(b) for any other reason (including failure of the offender to co-operate with the FEO) the FEO considers it expedient to do so.

(2) A FEO may make a reference under subsection (1) above at any time from the day after the enforcement order is made.

(3) When making a reference under subsection (1) above, the FEO shall provide the court with a report on the circumstances of the case.

(4) A report under subsection (3) above shall include, in particular—

(a) a copy of any report from a supervising officer received by the FEO under section 217(9) of this Act; and

(b) information about—

(i) the steps taken by the enforcement officer to obtain payment of or towards the relevant penalty; and

(ii) any effort (or lack of effort) made by the offender to make payment of or towards the penalty.

(5) Where a reference is made under subsection (1) above, the relevant court shall enquire of the offender as to the reason why the relevant penalty (or an instalment of it) has not been paid.

(6) Subsection (5) above does not apply where the offender is in prison.

(7) Subsections (3) to (7) of section 216 of this Act apply in relation to subsection (5) above as they apply in relation to subsection (1) of that section.

(8) After the court has considered—

(a) the report provided by the FEO under subsection (3) above; and

(b) any information obtained by enquiry under subsection (5) above,

the court may dispose of the case as mentioned in subsection (9) below.

(9) That is, the court may—

(a) revoke the enforcement order and deal with the offender as if the enforcement order had never been made;

(b) vary the enforcement order;

(c) confirm the enforcement order as previously made;

(d) direct the FEO to take specified steps to secure payment of or towards the relevant penalty in accordance with the enforcement order (including as varied under paragraph (b) above);

(e) make such other order as it thinks fit.

Textual Amendments

F202 Ss. 226A-226I and preceding cross-heading inserted (10.3.2008 for certain purposes and otherwise prosp.) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 55**, 84; S.I. 2008/42, **art. 3**, Sch.

226H Review of actions of FEO

(1) The offender may apply to the relevant court for review—

(a) in relation to an enforcement order—

(i) of any variation under section 226C(1) of this Act;

(ii) of any refusal of an application for variation under that section;

(b) of the making of a seizure order under section 226D(1) of this Act.

(2) An application under subsection (1) above requires to be made within 7 days of notification under section 226C(4) of this Act or (as the case may be) section 226D(4) of this Act.

(3) On an application under subsection (1) above, the relevant court may—

(a) confirm, vary or quash the decision of the FEO;

(b) make such other order as it thinks fit.

Textual Amendments

F202 Ss. 226A-226I and preceding cross-heading inserted (10.3.2008 for certain purposes and otherwise prosp.) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 55**, 84; S.I. 2008/42, **art. 3**, Sch.

VALID FROM 12/10/2009

[F203 226HA Judicial co-operation in criminal matters: mutual recognition of financial penalties: requests to other member States

(1) Subsection (4) applies where—

(a) an offender is subject to a relevant penalty (including such a penalty in relation to the payment of which an enforcement order has been made);

(b) the relevant penalty is not paid (or, where relevant, has not been paid in accordance with the enforcement order);

(c) there is no appeal outstanding in relation to the relevant penalty;

(d) a FEO is exercising (or intends to exercise) the function conferred—

(i) by paragraph (a) of section 226A(2) of this Act in respect of the relevant penalty; or

(ii) by paragraph (b) of that section in respect of any enforcement order relating to the relevant penalty; and

(e) it appears to the FEO that the offender is normally resident, or has property or income, in a member State of the European Union other than the United Kingdom.

(2) For the purposes of subsection (1)(c), there is no appeal outstanding in relation to a financial penalty if—

(a) no appeal has been brought in relation to the imposition of the financial penalty within the time allowed for making such an appeal; or

(b) such an appeal has been brought but the proceedings on appeal have been concluded.

(3) In subsections (1)(c) and (2) "appeal" in respect of financial penalties mentioned in section 223A(5)(b) and (c) includes a request made under section 302C of this Act that such a penalty be recalled.

(4) The FEO may issue a certificate as mentioned in section 223A(1) of this Act.

(5) Subsection (4) does not apply where the designated officer of the competent authority for Scotland has issued such a certificate in respect of the financial penalty.

(6) The FEO must give the central authority for Scotland any certificate issued under subsection (4), together with a copy, or extract, of the decision requiring payment of the relevant penalty.

(7) Where the central authority for Scotland receives the documents mentioned in subsection (6) above, subsections (3) to (6) of section 223B of this Act apply as if the documents had been given under subsection (2) of that section.**]]**

Textual Amendments

F203 S. 226HA inserted (12.10.2009) by The Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009 (S.S.I. 2009/342), **art. 4** (with art. 2)

226I Enforcement of fines etc.: interpretation

(1) In this section and sections 226A to 226H of this Act—

"enforcement order" is to be construed in accordance with section 226B(1) and (4) to (6) of this Act;

"FEO" means a fines enforcement officer;

"offender" means the person who is liable to pay a relevant penalty;

"relevant court"—

(a) in the case of a fine or compensation order, means—

(i) the court which imposed the penalty; or

(ii) where the penalty is transferred to another court, that other court;

(b) in the case of another relevant penalty (apart from a penalty specified by order for the purposes of this section), means—

(i) the court whose clerk is specified in the notice to the offender; or

(ii) where the penalty is transferred to another court, that other court;

(c) in the case of a penalty specified by order for the purposes of this section, means—

(i) the court whose clerk is specified in the notice to the offender;

(ii) where the penalty is transferred to another court, that other court; or

(iii) such other court as the order may specify for those purposes;

"relevant penalty" means—

(a) a fine;

(b) a compensation order imposed under section 249 of this Act;

(c) a fixed penalty offer made under section 302(1) of this Act;

(d) a compensation offer made under section 302A(1) of this Act;

(e) a fixed penalty notice given under section 54 (giving notices for fixed penalty offences) or section 62 (fixing notices to vehicles) of the Road Traffic Offenders Act 1988 (c. 53);

(f) a fixed penalty notice given under section 129 (fixed penalty notices) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8);

(g) such other penalty as the Scottish Ministers may by order specify for the purposes of this section.

(2) An order specifying a penalty or a court for the purpose of this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

Caution

227 Caution.

Where a person is convicted on indictment of an offence (other than an offence the sentence for which is fixed by law) the court may, instead of or in addition to imposing a fine or a period of imprisonment, ordain the accused to find caution for good behaviour for a period not exceeding 12 months and to such amount as the court considers appropriate.

VALID FROM 01/02/2011

F[F204] Community payback orders

Textual Amendments

F204 Ss. 227A-227ZN and cross-headings inserted (1.2.2011 except for the insertion of s. 227ZM, 1.4.2011 in so far as not already in force) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 14(1)**, 206(1); S.S.I. 2010/413, art. 2, sch. (with art. 3(1))

227A Community payback orders

(1) Where a person (the "offender") is convicted of an offence punishable by imprisonment, the court may, instead of imposing a sentence of imprisonment, impose a community payback order on the offender.

(2) A community payback order is an order imposing one or more of the following requirements—

(a) an offender supervision requirement,
(b) a compensation requirement,
(c) an unpaid work or other activity requirement,
(d) a programme requirement,
(e) a residence requirement,
(f) a mental health treatment requirement,
(g) a drug treatment requirement,
(h) an alcohol treatment requirement,
(i) a conduct requirement.

(3) Subsection (4) applies where—

(a) a person (the "offender") is convicted of an offence punishable by a fine (whether or not it is also punishable by imprisonment), and
(b) where the offence is also punishable by imprisonment, the court decides not to impose—
(i) a sentence of imprisonment, or
(ii) a community payback order under subsection (1) instead of a sentence of imprisonment.

(4) The court may, instead of or as well as imposing a fine, impose a community payback order on the offender imposing one or more of the following requirements—

(a) an offender supervision requirement,
(b) a level 1 unpaid work or other activity requirement,
(c) a conduct requirement.

(5) A justice of the peace court may only impose a community payback order imposing one or more of the following requirements—

(a) an offender supervision requirement,
(b) a compensation requirement,
(c) an unpaid work or other activity requirement,

(d) a residence requirement,

(e) a conduct requirement.

(6) Subsection (5)(c) is subject to section 227J(4).

(7) The Scottish Ministers may by order made by statutory instrument amend subsection (5) so as to add to or omit requirements that may be imposed by a community payback order imposed by a justice of the peace court.

(8) An order is not to be made under subsection (7) unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.

(9) In this section and sections 227B to 227ZK, except where the context requires otherwise—

"court" means the High Court, the sheriff or a justice of the peace court,

"imprisonment" includes detention.

227B Community payback order: procedure prior to imposition

(1) This section applies where a court is considering imposing a community payback order on an offender.

(2) The court must not impose the order unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant the imposition of such an order.

(3) Before imposing a community payback order imposing two or more requirements, the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.

(4) The court must not impose the order unless it has obtained, and taken account of, a report from an officer of a local authority containing information about the offender and the offender's circumstances.

(5) An Act of Adjournal may prescribe—

(a) the form of a report under subsection (4), and

(b) the particular information to be contained in it.

(6) Subsection (4) does not apply where the court is considering imposing a community payback order—

(a) imposing only a level 1 unpaid work or other activity requirement, or

(b) under section 227M(2).

(7) The clerk of the court must give a copy of any report obtained under subsection (4) to—

(a) the offender,

(b) the offender's solicitor (if any), and

(c) the prosecutor.

(8) Before imposing the order, the court must explain to the offender in ordinary language—

(a) the purpose and effect of each of the requirements to be imposed by the order,

(b) the consequences which may follow if the offender fails to comply with any of the requirements imposed by the order, and

(c) where the court proposes to include in the order provision under section 227X for it to be reviewed, the arrangements for such a review.

(9) The court must not impose the order unless the offender has, after the court has explained those matters, confirmed that the offender—

(a) understands those matters, and

(b) is willing to comply with each of the requirements to be imposed by the order.

(10) Subsection (9)(b) does not apply where the court is considering imposing a community payback order under section 227M(2).

227C Community payback order: responsible officer

(1) This section applies where a court imposes a community payback order on an offender.

(2) The court must, in imposing the order—

(a) specify the locality in which the offender resides or will reside for the duration of the order,

(b) require the local authority within whose area that locality is situated to nominate, within two days of its receiving a copy of the order, an officer of the authority as the responsible officer for the purposes of the order,

(c) require the offender to comply with any instructions given by the responsible officer—

(i) about keeping in touch with the responsible officer, or

(ii) for the purposes of subsection (3),

(d) require the offender to report to the responsible officer in accordance with instructions given by that officer,

(e) require the offender to notify the responsible officer without delay of—

(i) any change of the offender's address, and

(ii) the times, if any, at which the offender usually works (or carries out voluntary work) or attends school or any other educational establishment, and

(f) where the order imposes an unpaid work or other activity requirement, require the offender to undertake for the number of hours specified in the requirement such work or activity as the responsible officer may instruct, and at such times as may be so instructed.

(3) The responsible officer is responsible for—

(a) making any arrangements necessary to enable the offender to comply with each of the requirements imposed by the order,

(b) promoting compliance with those requirements by the offender,

(c) taking such steps as may be necessary to enforce compliance with the requirements of the order or to vary, revoke or discharge the order.

(4) References in this Act to the responsible officer are, in relation to an offender on whom a community payback order has been imposed, the officer for the time being nominated in pursuance of subsection (2)(b).

(5) In reckoning the period of two days for the purposes of subsection (2)(b), no account is to be taken of a Saturday or Sunday or any day which is a local or public holiday in the area of the local authority concerned.

227D Community payback order: further provision

(1) Where a community payback order is imposed on an offender, the order is to be taken for all purposes to be a sentence imposed on the offender.

(2) On imposing a community payback order, the court must state in open court the reasons for imposing the order.

(3) The imposition by a court of a community payback order on an offender does not prevent the court imposing a fine or any other sentence (other than imprisonment), or making any other order, that it would be entitled to impose or make in respect of the offence.

(4) Where a court imposes a community payback order on an offender, the clerk of the court must ensure that—

(a) a copy of the order is given to—

(i) the offender, and

(ii) the local authority within whose area the offender resides or will reside, and

(b) a copy of the order and such other documents and information relating to the case as may be useful are given to the clerk of the appropriate court (unless the court imposing the order is that court).

(5) A copy of the order may be given to the offender—

(a) by being delivered personally to the offender, or

(b) by being sent—

(i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000 (c.26)), or

(ii) by a postal service which provides for the delivery of the document to be recorded.

(6) A community payback order is to be in such form, or as nearly as may be in such form, as may be prescribed by Act of Adjournal.

227E Requirement to avoid conflict with religious beliefs, work etc.

(1) In imposing a community payback order on an offender, the court must ensure, so far as practicable, that any requirement imposed by the order avoids—

(a) a conflict with the offender's religious beliefs,

(b) interference with the times, if any, at which the offender normally works (or carries out voluntary work) or attends school or any other educational establishment.

(2) The responsible officer must ensure, so far as practicable, that any instruction given to the offender avoids such a conflict or interference.

227F Payment of offenders' travelling and other expenses

(1) The Scottish Ministers may by order made by statutory instrument provide for the payment to offenders of travelling or other expenses in connection with their compliance with requirements imposed on them by community payback orders.

(2) An order under subsection (1) may—

(a) specify expenses or provide for them to be determined under the order,

(b) provide for the payments to be made by or on behalf of local authorities,

(c) make different provision for different purposes.

(3) An order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

VALID FROM 01/02/2011

Offender supervision requirement

227G Offender supervision requirement

(1) In this Act, an "offender supervision requirement" is, in relation to an offender, a requirement that, during the specified period, the offender must attend appointments with the responsible officer or another person determined by the responsible officer, at such time and place as may be determined by the responsible officer, for the purpose of promoting the offender's rehabilitation.

(2) On imposing a community payback order, the court must impose an offender supervision requirement if—

(a) the offender is under 18 years of age at the time the order is imposed, or

(b) the court, in the order, imposes—

(i) a compensation requirement,

(ii) a programme requirement,

(iii) a residence requirement,

(iv) a mental health requirement,

(v) a drug treatment requirement,

(vi) an alcohol treatment requirement, or

(vii) a conduct requirement.

(3) The specified period must be at least 6 months and not more than 3 years.

(4) Subsection (3) is subject to subsection (5) and section 227ZE(4).

(5) In the case of an offender supervision requirement imposed on a person aged 16 or 17 along with only a level 1 unpaid work or other activity requirement, the specified period must be no more than whichever is the greater of—

(a) the specified period under section 227L in relation to the level 1 unpaid work or other activity requirement, and

(b) 3 months.

(6) In this section, "specified", in relation to an offender supervision requirement, means specified in the requirement.

VALID FROM 01/02/2011

Compensation requirement

227H Compensation requirement

(1) In this Act, a "compensation requirement" is, in relation to an offender, a requirement that the offender must pay compensation for any relevant matter in favour of a relevant person.

(2) In subsection (1)—

"relevant matter" means any personal injury, loss, damage or other matter in respect of which a compensation order could be made against the offender under section 249 of this Act, and

"relevant person" means a person in whose favour the compensation could be awarded by such a compensation order.

(3) A compensation requirement may require the compensation to be paid in a lump sum or in instalments.

(4) The offender must complete payment of the compensation before the earlier of the following—

(a) the end of the period of 18 months beginning with the day on which the compensation requirement is imposed,

(b) the beginning of the period of 2 months ending with the day on which the offender supervision requirement imposed under section 227G(2) ends.

(5) The following provisions of this Act apply in relation to a compensation requirement as they apply in relation to a compensation order, and as if the references in them to a compensation order included a compensation requirement—

(a) section 249(3), (4), (5) and (8) to (10),

(b) section 250(2),

(c) section 251(1), (1A) and (2)(b), and

(d) section 253.

VALID FROM 01/02/2011

Unpaid work or other activity requirement

227I Unpaid work or other activity requirement

(1) In this Act, an "unpaid work or other activity requirement" is, in relation to an offender, a requirement that the offender must, for the specified number of hours, undertake—

(a) unpaid work, or
(b) unpaid work and other activity.

(2) Whether the offender must undertake other activity as well as unpaid work is for the responsible officer to determine.

(3) The nature of the unpaid work and any other activity to be undertaken by the offender is to be determined by the responsible officer.

(4) The number of hours that may be specified in the requirement must be (in total)—
(a) at least 20 hours, and
(b) not more than 300 hours.

(5) An unpaid work or other activity requirement which requires the work or activity to be undertaken for a number of hours totalling no more than 100 is referred to in this Act as a "level 1 unpaid work or other activity requirement".

(6) An unpaid work or other activity requirement which requires the work or activity to be undertaken for a number of hours totalling more than 100 is referred to in this Act as a "level 2 unpaid work or other activity requirement".

(7) The Scottish Ministers may by order made by statutory instrument substitute another number of hours for any of the numbers of hours for the time being specified in subsections (4) to (6).

(8) An order under subsection (7) may only substitute for the number of hours for the time being specified in a provision mentioned in the first column of the following table a number of hours falling within the range set out in the corresponding entry in the second column.

Provision	***Range***	
	No fewer than	***No more than***
Subsection (4)(a)	10 hours	40 hours
Subsection (4)(b)	250 hours	350 hours
Subsections (5) and (6)	70 hours	150 hours

(9) An order under subsection (7) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(10) In this section, "specified", in relation to an unpaid work or other activity requirement, means specified in the requirement.

227J Unpaid work or other activity requirement: further provision

(1) A court may not impose an unpaid work or other activity requirement on an offender who is under 16 years of age.

(2) A court may impose such a requirement on an offender only if the court is satisfied, after considering the report mentioned in section 227B(4), that the offender is a suitable person to undertake unpaid work in pursuance of the requirement.

(3) Subsection (2) does not apply where the court is considering imposing a community payback order—

(a) imposing only a level 1 unpaid work or other activity requirement, or

(b) under section 227M(2).

(4) A justice of the peace court may impose a level 2 unpaid work or other activity requirement only if—

(a) the Scottish Ministers by regulations made by statutory instrument so provide, and

(b) the requirement is imposed in such circumstances and subject to such conditions as may be specified in the regulations.

(5) Regulations are not to be made under subsection (4) unless a draft of the statutory instrument containing them has been laid before and approved by resolution of the Scottish Parliament.

227K Allocation of hours between unpaid work and other activity

(1) Subject to subsection (2), it is for the responsible officer to determine how many out of the number of hours specified in an unpaid work or other activity requirement are to be allocated to undertaking, respectively—

(a) unpaid work, and

(b) any other activity to be undertaken.

(2) The number of hours allocated to undertaking an activity other than unpaid work must not exceed whichever is the lower of—

(a) 30% of the number of hours specified in the requirement, and

(b) 30 hours.

(3) The Scottish Ministers may by order made by statutory instrument—

(a) substitute another percentage for the percentage for the time being specified in subsection (2)(a),

(b) substitute another number of hours for the number of hours for the time being specified in subsection (2)(b).

(4) An order is not to be made under subsection (3) unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.

227L Time limit for completion of unpaid work or other activity

(1) The number of hours of unpaid work and any other activity that the offender is required to undertake in pursuance of an unpaid work or other activity requirement must be completed by the offender before the end of the specified period beginning with the imposition of the requirement.

(2) The "specified period" is—

(a) in relation to a level 1 unpaid work or other activity requirement, 3 months or such longer period as the court may specify in the requirement,

(b) in relation to a level 2 unpaid work or other activity requirement, 6 months or such longer period as the court may specify in the requirement.

227M Fine defaulters

(1) This section applies where—

(a) a fine has been imposed on an offender in respect of an offence,

(b) the offender fails to pay the fine or an instalment of the fine,

(c) the offender is not serving a sentence of imprisonment, and

(d) apart from this section, the court would have imposed a period of imprisonment on the offender under section 219(1) of this Act in respect of the failure to pay the fine or instalment.

(2) Instead of imposing a period of imprisonment under section 219(1) of this Act, the court—

(a) where the amount of the fine or the instalment does not exceed level 2 on the standard scale, must impose a community payback order on the offender imposing a level 1 unpaid work or other activity requirement,

(b) where the amount of the fine or the instalment exceeds that level, may impose such a community payback order.

(3) The court, in imposing a community payback order under subsection (2) on a person aged 16 or 17, must also impose an offender supervision requirement.

(4) Where the amount of the fine or the instalment does not exceed level 1 on the standard scale, the number of hours specified in the requirement must not exceed 50.

(5) On completion of the hours of unpaid work and any other activity specified in an unpaid work or other activity requirement imposed under this section, the fine in respect of which the requirement was imposed is discharged (or, as the case may be, the outstanding instalments of the fine are discharged).

(6) If, after a community payback order is imposed on an offender under this section, the offender pays the fine or the full amount of any outstanding instalments, the appropriate court must discharge the order.

(7) Subsection (2) is subject to sections 227J(1) and 227N(2), (3) and (7).

(8) In this section, "court" does not include the High Court.

227N Offenders subject to more than one unpaid work or other activity requirement

(1) This section applies where—

(a) a court is considering imposing an unpaid work or other activity requirement on an offender (referred to as the "new requirement"), and

(b) at the time the court is considering imposing the requirement, there is already in effect one or more community payback orders imposing such a requirement on the same offender (each referred to as an "existing requirement").

(2) The court may, in imposing the new requirement, direct that it is to be concurrent with any existing requirement.

(3) Where the court makes a direction under subsection (2), hours of unpaid work or other activity undertaken after the new requirement is imposed count for the purposes of compliance with that requirement and the existing requirement.

(4) Subsection (5) applies where the court does not make a direction under subsection (2).

(5) The maximum number of hours which may be specified in the new requirement is the number of hours specified in section 227I(4)(b) less the aggregate of the number of hours of unpaid work or activity still to be completed under each existing requirement at the time the new requirement is imposed.

(6) In calculating that aggregate, if any existing requirement is concurrent with another (by virtue of a direction under subsection (2)), hours that count for the purposes of compliance with both (or, as the case may be, all) are to be counted only once.

(7) Where that maximum number is less than the minimum number of hours that can be specified by virtue of section 227I(4)(a), the court must not impose the new requirement.

227O Rules about unpaid work and other activity

(1) The Scottish Ministers may make rules by statutory instrument for or in connection with the undertaking of unpaid work and other activities in pursuance of unpaid work or other activity requirements.

(2) Rules under subsection (1) may in particular make provision for—
- (a) limiting the number of hours of work or other activity that an offender may be required to undertake in any one day,
- (b) reckoning the time spent undertaking unpaid work or other activity,
- (c) the keeping of records of unpaid work and any other activity undertaken.

(3) Rules under subsection (1) may—
- (a) confer functions on responsible officers,
- (b) contain rules about the way responsible officers are to exercise functions under this Act.

(4) Rules under subsection (1) are subject to annulment in pursuance of a resolution of the Scottish Parliament.

VALID FROM 01/02/2011

Programme requirement

227P Programme requirement

(1) In this Act, a "programme requirement" is, in relation to an offender, a requirement that the offender must participate in a specified programme, at the specified place and on the specified number of days.

(2) In this section, "programme" means a course or other planned set of activities, taking place over a period of time, and provided to individuals or groups of individuals for the purpose of addressing offending behavioural needs.

(3) A court may impose a programme requirement on an offender only if the specified programme is one which has been recommended by an officer of a local authority as being suitable for the offender to participate in.

(4) If an offender's compliance with a proposed programme requirement would involve the co-operation of a person other than the offender, the court may impose the requirement only if the other person consents.

(5) A court may not impose a programme requirement that would require an offender to participate in a specified programme after the expiry of the period specified in the offender supervision requirement to be imposed at the same time as the programme requirement (by virtue of section 227G(2)(b)).

(6) Where the court imposes a programme requirement on an offender, the requirement is to be taken to include a requirement that the offender, while attending the specified programme, complies with any instructions given by or on behalf of the person in charge of the programme.

(7) In this section, "specified", in relation to a programme requirement, means specified in the requirement.

VALID FROM 01/02/2011

Residence requirement

227Q Residence requirement

(1) In this Act, a "residence requirement" is, in relation to an offender, a requirement that, during the specified period, the offender must reside at a specified place.

(2) The court may, in a residence requirement, require an offender to reside at a hostel or other institution only if the hostel or institution has been recommended as a suitable place for the offender to reside in by an officer of a local authority.

(3) The specified period must not be longer than the period specified in the offender supervision requirement to be imposed at the same time as the residence requirement (by virtue of section 227G(2)(b)).

(4) In this section, "specified", in relation to a residence requirement, means specified in the requirement.

VALID FROM 01/02/2011

Mental health treatment requirement

227R Mental health treatment requirement

(1) In this Act, a "mental health treatment requirement" is, in relation to an offender, a requirement that the offender must submit, during the specified period, to treatment

by or under the direction of a registered medical practitioner or a registered psychologist (or both) with a view to improving the offender's mental condition.

(2) The treatment to which an offender may be required to submit under a mental health treatment requirement is such of the kinds of treatment described in subsection (3) as is specified; but otherwise the nature of the treatment is not to be specified.

(3) Those kinds of treatment are—

(a) treatment as a resident patient in a hospital (other than a State hospital) within the meaning of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) ("the 2003 Act"),

(b) treatment as a non-resident patient at such institution or other place as may be specified, or

(c) treatment by or under the direction of such registered medical practitioner or registered psychologist as may be specified.

(4) A court may impose a mental health treatment requirement on an offender only if the court is satisfied—

(a) on the written or oral evidence of an approved medical practitioner (within the meaning of the 2003 Act), that Condition A is met,

(b) on the written or oral evidence of the registered medical practitioner or registered psychologist by whom or under whose direction the treatment is to be provided, that Condition B is met, and

(c) that Condition C is met.

(5) Condition A is that—

(a) the offender suffers from a mental condition,

(b) the condition requires, and may be susceptible to, treatment, and

(c) the condition is not such as to warrant the offender's being subject to—

(i) a compulsory treatment order under section 64 of the 2003 Act, or

(ii) a compulsion order under section 57A of this Act.

(6) Condition B is that the treatment proposed to be specified is appropriate for the offender.

(7) Condition C is that arrangements have been made for the proposed treatment including, where the treatment is to be of the kind mentioned in subsection (3)(a), arrangements for the offender's reception in the hospital proposed to be specified in the requirement.

(8) The specified period must not be longer than the period specified in the offender supervision requirement to be imposed at the same time as the mental health treatment requirement (by virtue of section 227G(2)(b)).

(9) In this section, "specified", in relation to a mental health treatment requirement, means specified in the requirement.

227S Mental health treatment requirements: medical evidence

(1) For the purposes of section 227R(4)(a) or (b), a written report purporting to be signed by an approved medical practitioner (within the meaning of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)) may be received in evidence without the need for proof of the signature or qualifications of the practitioner.

(2) Where such a report is lodged in evidence otherwise than by or on behalf of the offender, a copy of the report must be given to—

(a) the offender, and

(b) the offender's solicitor (if any).

(3) The court may adjourn the case if it considers it necessary to do so to give the offender further time to consider the report.

(4) Subsection (5) applies where the offender is—

(a) detained in a hospital under this Act, or

(b) remanded in custody.

(5) For the purpose of calling evidence to rebut any evidence contained in a report lodged as mentioned in subsection (2), arrangements may be made by or on behalf of the offender for an examination of the offender by a registered medical practitioner.

(6) Such an examination is to be carried out in private.

227T Power to change treatment

(1) This section applies where—

(a) a mental health treatment requirement has been imposed on an offender, and

(b) the registered medical practitioner or registered psychologist by whom or under whose direction the offender is receiving the treatment to which the offender is required to submit in pursuance of the requirement is of the opinion mentioned in subsection (2).

(2) That opinion is—

(a) that the offender requires, or that it would be appropriate for the offender to receive, a different kind of treatment (whether in whole or in part) from that which the offender has been receiving, or

(b) that the treatment (whether in whole or in part) can be more appropriately given in or at a different hospital or other institution or place from that where the offender has been receiving treatment.

(3) The practitioner or, as the case may be, psychologist may make arrangements for the offender to be treated accordingly.

(4) Subject to subsection (5), the treatment provided under the arrangements must be of a kind which could have been specified in the mental health treatment requirement.

(5) The arrangements may provide for the offender to receive treatment (in whole or in part) as a resident patient in an institution or place even though it is one that could not have been specified for that purpose in the mental health treatment requirement.

(6) Arrangements may be made under subsection (3) only if—

(a) the offender and the responsible officer agree to the arrangements,

(b) the treatment will be given by or under the direction of a registered medical practitioner or registered psychologist who has agreed to accept the offender as a patient, and

(c) where the treatment requires the offender to be a resident patient, the offender will be received as such.

(7) Where arrangements are made under subsection (3)—

(a) the responsible officer must notify the court of the arrangements, and

(b) the treatment provided under the arrangements is to be taken to be treatment to which the offender is required to submit under the mental health treatment requirement.

VALID FROM 01/02/2011

Drug treatment requirement

227U Drug treatment requirement

(1) In this Act, a "drug treatment requirement" is, in relation to an offender, a requirement that the offender must submit, during the specified period, to treatment by or under the direction of a specified person with a view to reducing or eliminating the offender's dependency on, or propensity to misuse, drugs.

(2) The treatment to which an offender may be required to submit under a drug treatment requirement is such of the kinds of treatment described in subsection (3) as is specified (but otherwise the nature of the treatment is not to be specified).

(3) Those kinds of treatment are—

(a) treatment as a resident in such institution or other place as is specified,

(b) treatment as a non-resident at such institution or other place, and at such intervals, as is specified.

(4) The specified person must be a person who has the necessary qualifications or experience in relation to the treatment to be provided.

(5) The specified period must not be longer than the period specified in the offender supervision requirement to be imposed at the same time as the drug treatment requirement (by virtue of section 227G(2)(b)).

(6) A court may impose a drug treatment requirement on an offender only if the court is satisfied that—

(a) the offender is dependent on, or has a propensity to misuse, any controlled drug (as defined in section 2(1)(a) of the Misuse of Drugs Act 1971 (c.38)),

(b) the dependency or propensity requires, and may be susceptible to, treatment, and

(c) arrangements have been, or can be, made for the proposed treatment including, where the treatment is to be of the kind mentioned in subsection (3)(a), arrangements for the offender's reception in the institution or other place to be specified.

(7) In this section, "specified", in relation to a drug treatment requirement, means specified in the requirement.

VALID FROM 01/02/2011

Alcohol treatment requirement

227V Alcohol treatment requirement

(1) In this Act, an "alcohol treatment requirement" is, in relation to an offender, a requirement that the offender must submit, during the specified period, to treatment by or under the direction of a specified person with a view to the reduction or elimination of the offender's dependency on alcohol.

(2) The treatment to which an offender may be required to submit under an alcohol treatment requirement is such of the kinds of treatment described in subsection (3) as is specified (but otherwise the nature of the treatment is not to be specified).

(3) Those kinds of treatment are—

(a) treatment as a resident in such institution or other place as is specified,

(b) treatment as a non-resident at such institution or other place, and at such intervals, as is specified,

(c) treatment by or under the direction of such person as is specified.

(4) The person specified under subsection (1) or (3)(c) must be a person who has the necessary qualifications or experience in relation to the treatment to be provided.

(5) The specified period must not be longer than the period specified in the offender supervision requirement to be imposed at the same time as the alcohol treatment requirement (by virtue of section 227G(2)(b)).

(6) A court may impose an alcohol treatment requirement on an offender only if the court is satisfied that—

(a) the offender is dependent on alcohol,

(b) the dependency requires, and may be susceptible to, treatment, and

(c) arrangements have been, or can be, made for the proposed treatment, including, where the treatment is to be of the kind mentioned in subsection (3)(a), arrangements for the offender's reception in the institution or other place to be specified.

(7) In this section, "specified", in relation to an alcohol treatment requirement, means specified in the requirement.

VALID FROM 01/02/2011

Conduct requirement

227W Conduct requirement

(1) In this Act, a "conduct requirement" is, in relation to an offender, a requirement that the offender must, during the specified period, do or refrain from doing specified things.

(2) A court may impose a conduct requirement on an offender only if the court is satisfied that the requirement is necessary with a view to—

(a) securing or promoting good behaviour by the offender, or

(b) preventing further offending by the offender.

(3) The specified period must be not more than 3 years.

(4) The specified things must not include anything that—

(a) could be required by imposing one of the other requirements listed in section 227A(2), or

(b) would be inconsistent with the provisions of this Act relating to such other requirements.

(5) In this section, "specified", in relation to a conduct requirement, means specified in the requirement.

VALID FROM 01/02/2011

Community payback orders: review, variation etc.

227X Periodic review of community payback orders

(1) On imposing a community payback order on an offender, the court may include in the order provision for the order to be reviewed at such time or times as may be specified in the order.

(2) A review carried out in pursuance of such provision is referred to in this section as a "progress review".

(3) A progress review may be carried out by the court which imposed the community payback order or (if different) the appropriate court, and, where those courts are different, the court must specify in the order which of those courts is to carry out the reviews.

(4) A progress review is to be carried out in such manner as the court carrying out the review may determine.

(5) Before each progress review, the responsible officer must give the court a written report on the offender's compliance with the requirements imposed by the community payback order in the period to which the review relates.

(6) The offender must attend each progress review.

(7) If the offender fails to attend a progress review, the court may—

(a) issue a citation requiring the offender's attendance, or

(b) issue a warrant for the offender's arrest.

(8) The unified citation provisions apply in relation to a citation under subsection (7)(a) as they apply in relation to a citation under section 216(3)(a) of this Act.

(9) Subsections (10) and (11) apply where, in the course of carrying out a progress review in respect of a community payback order, it appears to the court that the offender has failed to comply with a requirement imposed by the order.

(10) The court must—

(a) provide the offender with written details of the alleged failure,

(b) inform the offender that the offender is entitled to be legally represented, and

(c) inform the offender that no answer need be given to the allegation before the offender—

(i) has been given an opportunity to take legal advice, or

(ii) has indicated that the offender does not wish to take legal advice.

(11) The court must then—

(a) if it is the appropriate court, appoint another hearing for consideration of the alleged failure in accordance with section 227ZC, or

(b) if it is not the appropriate court, refer the alleged failure to that court for consideration in accordance with that section.

(12) On conclusion of a progress review in respect of a community payback order, the court may vary, revoke or discharge the order in accordance with section 227Z.

227Y Applications to vary, revoke and discharge community payback orders

(1) The appropriate court may, on the application of either of the persons mentioned in subsection (2), vary, revoke or discharge a community payback order in accordance with section 227Z.

(2) Those persons are—

(a) the offender on whom the order was imposed,

(b) the responsible officer in relation to the offender.

227Z Variation, revocation and discharge: court's powers

(1) This section applies where a court is considering varying, revoking or discharging a community payback order imposed on an offender.

(2) The court may vary, revoke or discharge the order only if satisfied that it is in the interests of justice to do so having regard to circumstances which have arisen since the order was imposed.

(3) Subsection (2) does not apply where the court is considering varying the order under section 227ZC(7)(d).

(4) In varying an order, the court may, in particular—

(a) add to the requirements imposed by the order,

(b) revoke or discharge any requirement imposed by the order,

(c) vary any requirement imposed by the order,

(d) include provision for progress reviews under section 227X,

(e) where the order already includes such provision, vary that provision.

(5) In varying a requirement imposed by the order, the court may, in particular—

(a) extend or shorten any period or other time limit specified in the requirement,

(b) in the case of an unpaid work or other activity requirement, increase or decrease the number of hours specified in the requirement,

(c) in the case of a compensation requirement, vary the amount of compensation or any instalment.

(6) The court may not, under subsection (5)(b), increase the number of hours beyond the appropriate maximum.

(7) The appropriate maximum is the number of hours specified in section 227I(4)(b) at the time the unpaid work or other activity requirement being varied was imposed less the aggregate of the number of hours of unpaid work or other activity still to be completed under each other unpaid work or other activity requirement (if any) in effect in respect of the offender at the time of the variation (a "current requirement").

(8) In calculating that aggregate, if any current requirement is concurrent with another (by virtue of a direction under section 227N(2)), hours that count for the purposes of compliance with both (or, as the case may be, all) are to be counted only once.

(9) The court may not, under subsection (5)(c), increase the amount of compensation beyond the maximum that could have been awarded at the time the requirement was imposed.

(10) Where the court varies a restricted movement requirement imposed by a community payback order, the court must give a copy of the order making the variation to the person responsible for monitoring the offender's compliance with the requirement.

(11) Where the court revokes a community payback order, the court may deal with the offender in respect of the offence in relation to which the order was imposed as it could have dealt with the offender had the order not been imposed.

(12) Subsection (11) applies in relation to a community payback order imposed under section 227M(2) as if the reference to the offence in relation to which the order was imposed were a reference to the failure to pay in respect of which the order was imposed.

(13) Where the court is considering varying, revoking or discharging the order otherwise than on the application of the offender, the court must issue a citation to the offender requiring the offender to appear before the court (except where the offender is required to appear by section 227X(6)) or 227ZC(2)(b).

(14) If the offender fails to appear as required by the citation, the court may issue a warrant for the arrest of the offender.

(15) The unified citation provisions apply in relation to a citation under subsection (13) as they apply in relation to a citation under section 216(3)(a) of this Act.

227ZA Variation of community payback orders: further provision

(1) This section applies where a court is considering varying a community payback order imposed on an offender.

(2) The court must not make the variation unless it has obtained, and taken account of, a report from the responsible officer containing information about the offender and the offender's circumstances.

(3) An Act of Adjournal may prescribe—

(a) the form of a report under subsection (2), and
(b) the particular information to be contained in it.

(4) Subsection (2) does not apply where the court is considering varying a community payback order—
(a) so that it imposes only a level 1 unpaid work or other activity requirement, or
(b) imposed under section 227M(2).

(5) The clerk of the court must give a copy of any report obtained under subsection (2) to—
(a) the offender,
(b) the offender's solicitor (if any).

(6) Before making the variation, the court must explain to the offender in ordinary language—
(a) the purpose and effect of each of the requirements to be imposed by the order as proposed to be varied,
(b) the consequences which may follow if the offender fails to comply with any of the requirements imposed by the order as proposed to be varied, and
(c) where the court proposes to include in the order as proposed to be varied provision for a progress review under section 227X, or to vary any such provision already included in the order, the arrangements for such a review.

(7) The court must not make the variation unless the offender has, after the court has explained those matters, confirmed that the offender—
(a) understands those matters, and
(b) is willing to comply with each of the requirements to be imposed by the order as proposed to be amended.

(8) Where the variation would impose a new requirement—
(a) the court must not make the variation if the new requirement is not a requirement that could have been imposed by the order when it was imposed,
(b) if the new requirement is one which could have been so imposed, the court must, before making the variation take whatever steps the court would have been required to take before imposing the requirement had it been imposed by the order when it was imposed.

(9) Subsection (8)(a) does not prevent the imposition of a restricted movement requirement under section 227ZC(7)(d).

(10) In determining for the purpose of subsection (8)(a) whether an unpaid work or other activity requirement is a requirement that could have been imposed by the order when the order was imposed, the effect of section 227N(7) is to be ignored.

(11) Where the variation would vary any requirement imposed by the order, the court must not make the variation if the requirement as proposed to be varied could not have been imposed, or imposed in that way, by the order when it was imposed.

(12) Subsections (4) and (5) of section 227D apply, with the necessary modifications, where a community payback order is varied as they apply where such an order is imposed.

227ZB Change of offender's residence to new local authority area

(1) The section applies where—

(a) the offender on whom a community payback order has been imposed proposes to change, or has changed, residence to a locality ("the new locality") situated in the area of a different local authority from that in which the locality currently specified in the order is situated, and

(b) the court is considering varying the order so as to specify the new local authority area in which the offender resides or will reside.

(2) The court may vary the order only if satisfied that arrangements have been, or can be, made in the local authority area in which the new locality is situated for the offender to comply with the requirements imposed by the order.

(3) If the court considers that a requirement ("the requirement concerned") imposed by the order cannot be complied with if the offender resides in the new locality, the court must not vary the order so as to specify the new local authority area unless it also varies the order so as to—

(a) revoke or discharge the requirement concerned, or

(b) substitute for the requirement concerned another requirement that can be so complied with.

(4) Where the court varies the order, the court must also vary the order so as to require the local authority for the area in which the new locality is situated to nominate an officer of the authority to be the responsible officer for the purposes of the order.

VALID FROM 01/02/2011

Breach of community payback order

227ZC Breach of community payback order

(1) This section applies where it appears to the appropriate court that an offender on whom a community payback order has been imposed has failed to comply with a requirement imposed by the order.

(2) The court may—

(a) issue a warrant for the offender's arrest, or

(b) issue a citation to the offender requiring the offender to appear before the court.

(3) If the offender fails to appear as required by a citation issued under subsection (2)(b), the court may issue a warrant for the arrest of the offender.

(4) The unified citation provisions apply in relation to a citation under subsection (2)(b) as they apply in relation to a citation under section 216(3)(a) of this Act.

(5) The court must, before considering the alleged failure—

(a) provide the offender with written details of the alleged failure,

(b) inform the offender that the offender is entitled to be legally represented, and

(c) inform the offender that no answer need be given to the allegation before the offender—

(i) has been given an opportunity to take legal advice, or

(ii) has indicated that the offender does not wish to take legal advice.

(6) Subsection (5) does not apply if the offender has previously been provided with those details and informed about those matters under section 227X(10) of this Act.

(7) Where the order was imposed under section 227A, if the court is satisfied that the offender has failed without reasonable excuse to comply with a requirement imposed by the order, the court may—

(a) impose on the offender a fine not exceeding level 3 on the standard scale,

(b) where the order was imposed under section 227A(1), revoke the order and deal with the offender in respect of the offence in relation to which the order was imposed as it could have dealt with the offender had the order not been imposed,

(c) where the order was imposed under section 227A(4), revoke the order and impose on the offender a sentence of imprisonment for a term not exceeding—

(i) where the court is a justice of the peace court, 60 days,

(ii) in any other case, 3 months,

(d) vary the order so as to impose a new requirement, vary any requirement imposed by the order or revoke or discharge any requirement imposed by the order, or

(e) both impose a fine under paragraph (a) and vary the order under paragraph (d).

(8) Where the order was imposed under section 227M(2), if the court is satisfied that the offender has failed without reasonable excuse to comply with a requirement imposed by the order, the court may—

(a) revoke the order and impose on the offender a period of imprisonment for a term not exceeding—

(i) where the court is a justice of the peace court, 60 days,

(ii) in any other case, 3 months, or

(b) vary—

(i) the number of hours specified in the level 1 unpaid work or other activity requirement imposed by the order, and

(ii) where the order also imposes an offender supervision requirement, the specified period under section 227G in relation to the requirement.

(9) Where the court revokes a community payback order under subsection (7)(b) or (c) and the offender is, in respect of the same offence, also subject to—

(a) a drug treatment and testing order, by virtue of section 234J, or

(b) a restriction of liberty order, by virtue of section 245D(3),

the court must, before dealing with the offender under subsection (7)(b) or (c), revoke the drug treatment and testing order or, as the case may be, restriction of liberty order.

(10) If the court is satisfied that the offender has failed to comply with a requirement imposed by the order but had a reasonable excuse for the failure, the court may, subject to section 227Z(2), vary the order so as to impose a new requirement, vary any requirement imposed by the order or revoke or discharge any requirement imposed by the order.

(11) Subsections (7)(b) and (c) and (9) are subject to section 42(9) of the Criminal Justice (Scotland) Act 2003 (asp 7) (powers of drugs courts to deal with breach of community payback orders).

227ZD Breach of community payback order: further provision

(1) Evidence of one witness is sufficient for the purpose of establishing that an offender has failed without reasonable excuse to comply with a requirement imposed by a community payback order.

(2) Subsection (3) applies in relation to a community payback order imposing a compensation requirement.

(3) A document bearing to be a certificate signed by the clerk of the appropriate court and stating that the compensation, or an instalment of the compensation, has not been paid as required by the requirement is sufficient evidence that the offender has failed to comply with the requirement.

(4) The appropriate court may, for the purpose of considering whether an offender has failed to comply with a requirement imposed by a community payback order, require the responsible officer to provide a report on the offender's compliance with the requirement.

VALID FROM 01/02/2011

Restricted movement requirement

227ZE Restricted movement requirement

(1) The requirements which the court may impose under section 227ZC(7)(d) include a restricted movement requirement.

(2) If the court varies a community payback order under section 227ZC(7)(d) so as to impose a restricted movement requirement, the court must also vary the order so as to impose an offender supervision requirement, unless an offender supervision requirement is already imposed by the order.

(3) The court must ensure that the specified period under section 227G in relation to the offender supervision requirement is at least as long as the period for which the restricted movement requirement has effect and, where the community payback order already imposes an offender supervision requirement, must vary it accordingly, if necessary.

(4) The minimum period of 6 months in section 227G(3) does not apply in relation to an offender supervision requirement imposed under subsection (2).

(5) Where the court varies the order so as to impose a restricted movement requirement, the court must give a copy of the order making the variation to the person responsible for monitoring the offender's compliance with the requirement.

(6) If during the period for which the restricted movement requirement is in effect it appears to the person responsible for monitoring the offender's compliance with the

requirement that the offender has failed to comply with the requirement, the person must report the matter to the offender's responsible officer.

(7) On receiving a report under subsection (6), the responsible officer must report the matter to the court.

227ZF Restricted movement requirement: effect

(1) In this Act, a "restricted movement requirement" is, in relation to an offender, a requirement restricting the offender's movements to such extent as is specified.

(2) A restricted movement requirement may in particular require the offender—

(a) to be in a specified place at a specified time or during specified periods, or

(b) not to be in a specified place, or a specified class of place, at a specified time or during specified periods.

(3) In imposing a restricted movement requirement containing provision under subsection (2)(a), the court must ensure that the offender is not required, either by the requirement alone or the requirement taken together with any other relevant requirement or order, to be at any place for periods totalling more than 12 hours in any one day.

(4) In subsection (3), "other relevant requirement or order" means—

(a) any other restricted movement requirement in effect in respect of the offender at the time the court is imposing the requirement referred to in subsection (3), and

(b) any restriction of liberty order under section 245A in effect in respect of the offender at that time.

(5) A restricted movement requirement—

(a) takes effect from the specified day, and

(b) has effect for such period as is specified.

(6) The period specified under subsection (5)(b) must be—

(a) not less than 14 days, and

(b) subject to subsections (7) and (8), not more than 12 months.

(7) Subsection (8) applies in the case of a restricted movement requirement imposed for failure to comply with a requirement of a community payback order—

(a) where the offender was under 18 years of age at the time the order was imposed, or

(b) where the only requirement imposed by the order is a level 1 unpaid work or other activity requirement.

(8) The period specified under subsection (5)(b) must be not more than—

(a) where the order was imposed by a justice of the peace court, 60 days, or

(b) in any other case, 3 months.

(9) A court imposing a restricted movement requirement must specify in it—

(a) the method by which the offender's compliance with the requirement is to be monitored, and

(b) the person who is to be responsible for monitoring that compliance.

(10) The Scottish Ministers may by regulations made by statutory instrument substitute—

(a) for the number of hours for the time being specified in subsection (3) another number of hours,

(b) for the number of months for the time being specified in subsection (6)(b) another number of months.

(11) Regulations are not to be made under subsection (10) unless a draft of the statutory instrument containing the regulations has been laid before and approved by resolution of the Scottish Parliament.

(12) In this section, "specified", in relation to a restricted movement requirement, means specified in the requirement.

227ZG Restricted movement requirements: further provision

(1) A court may not impose a restricted movement requirement requiring the offender to be, or not to be, in a specified place unless it is satisfied that the offender's compliance with the requirement can be monitored by the method specified in the requirement.

(2) Before imposing a restricted movement requirement requiring the offender to be in a specified place, the appropriate court must obtain and consider a report by an officer of the local authority in whose area the place is situated on—

(a) the place, and

(b) the attitude of any person (other than the offender) likely to be affected by the enforced presence of the offender at the place.

(3) The court may, before imposing the requirement, hear the officer who prepared the report.

227ZH Variation of restricted movement requirement

(1) This section applies where—

(a) a community payback order which is in force in respect of an offender imposes a restricted movement requirement requiring the offender to be at a particular place specified in the requirement for any period, and

(b) the court is considering varying the requirement so as to require the offender to be at a different place ("the new place").

(2) Before making the variation, the appropriate court must obtain and consider a report by an officer of the local authority in whose area the new place is situated on—

(a) the new place, and

(b) the attitude of any person (other than the offender) likely to be affected by the enforced presence of the offender at the new place.

(3) The court may, before making the variation, hear the officer who prepared the report.

227ZI Remote monitoring

Section 245C of this Act, and regulations made under that section, apply in relation to the imposition of, and compliance with, restricted movement requirements as they apply in relation to the imposition of, and compliance with, restriction of liberty orders.

227ZJ Restricted movement requirements: Scottish Ministers' functions

(1) The Scottish Ministers may by regulations made by statutory instrument prescribe—

(a) which courts, or class or classes of courts, may impose restricted movement requirements,

(b) the method or methods of monitoring compliance with a restricted movement requirement which may be specified in such a requirement,

(c) the class or classes of offender on whom such a requirement may be imposed.

(2) Regulations under subsection (1) may make different provision about the matters mentioned in paragraphs (b) and (c) of that subsection in relation to different courts or classes of court.

(3) Regulations under subsection (1) are subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) The Scottish Ministers must determine the person, or class or description of person, who may be specified in a restricted movement requirement as the person to be responsible for monitoring the offender's compliance with the requirement (referred to in this section as the "monitor").

(5) The Scottish Ministers may determine different persons, or different classes or descriptions of person, in relation to different methods of monitoring.

(6) The Scottish Ministers must notify each court having power to impose a restricted movement requirement of their determination.

(7) Subsection (8) applies where—

(a) the Scottish Ministers make a determination under subsection (4) changing a previous determination made by them, and

(b) a person specified in a restricted movement requirement in effect at the date the determination takes effect as the monitor is not a person, or is not of a class or description of person, mentioned in the determination as changed.

(8) The appropriate court must—

(a) vary the restricted movement requirement so as to specify a different person as the monitor,

(b) send a copy of the requirement as varied to that person and to the responsible officer, and

(c) notify the offender of the variation.

227ZK Documentary evidence in proceedings for breach of restricted movement requirement

(1) This section applies for the purposes of establishing in any proceedings whether an offender on whom a restricted movement requirement has been imposed has complied with the requirement.

(2) Evidence of the presence or absence of the offender at a particular place at a particular time may be given by the production of a document or documents bearing to be—

(a) a statement automatically produced by a device specified in regulations made under section 245C of this Act, by which the offender's whereabouts were remotely monitored, and

(b) a certificate signed by a person nominated for the purposes of this paragraph by the Scottish Ministers that the statement relates to the whereabouts of the offender at the dates and times shown in the statement.

(3) The statement and certificate are, when produced in evidence, sufficient evidence of the facts stated in them.

(4) The statement and certificate are not admissible in evidence at any hearing unless a copy of them has been served on the offender before the hearing.

(5) Where it appears to any court before which the hearing is taking place that the offender has not had sufficient notice of the statement or certificate, the court may adjourn the hearing or make any order that it considers appropriate.

VALID FROM 01/02/2011

Local authorities: annual consultation about unpaid work

227ZL Local authorities: annual consultations about unpaid work

(1) Each local authority must, for each year, consult prescribed persons about the nature of unpaid work and other activities to be undertaken by offenders residing in the local authority's area on whom community payback orders are imposed.

(2) In subsection (1), "prescribed persons" means such persons, or class or classes of person, as may be prescribed by the Scottish Ministers by regulations made by statutory instrument.

(3) A statutory instrument containing regulations under subsection (2) is to be subject to annulment in pursuance of a resolution of the Scottish Parliament.

VALID FROM 01/02/2011

Annual reports on community payback orders

227ZM Annual reports on community payback orders

(1) Each local authority must, as soon as practicable after the end of each reporting year, prepare a report on the operation of community payback orders within their area during that reporting year, and send a copy of the report to the Scottish Ministers.

(2) The Scottish Ministers may issue directions to local authorities about the content of their reports under subsection (1); and local authorities must comply with any such directions.

(3) The Scottish Ministers must, as soon as practicable after the end of each reporting year, lay before the Scottish Parliament and publish a report that collates and summarises the data included in the various reports under subsection (1).

(4) In this section, "reporting year" means—

(a) the period of 12 months beginning on the day this section comes into force, or
(b) any subsequent period of 12 months beginning on an anniversary of that day.

VALID FROM 01/02/2011

Community payback order: meaning of "the appropriate court"

227ZN Meaning of "the appropriate court"

(1) In sections 227A to 227ZK, "the appropriate court" means, in relation to a community payback order—
(a) where the order was imposed by the High Court of Justiciary, that Court,
(b) where the order was imposed by a sheriff, a sheriff having jurisdiction in the locality mentioned in subsection (2),
(c) where the order was imposed by a justice of the peace court—
(i) the justice of the peace court having jurisdiction in that locality, or
(ii) if there is no justice of the peace court having jurisdiction in that locality, a sheriff having such jurisdiction.

(2) The locality referred to in subsection (1) is the locality for the time being specified in the community payback order under section 227C(2)(a).**]**

Probation

228 Probation orders.

(1) Subject to subsection (2) below, where an accused is convicted of an offence (other than an offence the sentence for which is fixed by law) the court if it is of the opinion that it is expedient to do so—
(a) having regard to the circumstances, including the nature of the offence and the character of the offender; and
(b) having obtained a report as to the circumstances and character of the offender,
may, instead of sentencing him, make an order requiring the offender to be under supervision for a period to be specified in the order of not less than six months nor more than three years; and such an order is, in this Act, referred to as a "probation order".

(2) A court shall not make a probation order under subsection (1) above unless it is satisfied that suitable arrangements for the supervision of the offender can be made—
(a) in a case other than that mentioned in paragraph (b) below, by the local authority in whose area he resides or is to reside; or
(b) in a case where, by virtue of section 234(1) of this Act, subsections (3) and (4) below would not apply, by the probation committee for the area which contains the petty sessions area which would be named in the order.

(3) A probation order shall be as nearly as may be in the form prescribed by Act of Adjournal, and shall—
(a) name the local authority area in which the offender resides or is to reside; and

(b) subject to subsection (4) below, make provision for the offender to be under the supervision of an officer of the local authority of that area.

(4) Where the offender resides or is to reside in a local authority area in which the court which makes the order 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 Schedule 6 to this Act) in the area of residence or intended residence, and the appropriate court shall require the local authority for that area to arrange for the offender to be under the supervision of an officer of that authority.

(5) Before making a probation order, the court shall explain to the offender in ordinary language—

(a) the effect of the order, including any additional requirements proposed to be inserted under section 229 or 230 of this Act; and

(b) that if he fails to comply with the order or commits another offence during the probation period he will be liable to be 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.

(6) The clerk of the court by which a probation order is made or of the appropriate court, as the case may be, shall—

(a) cause copies of the probation order to be given to the officer of the local authority who is to supervise 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; and

(b) cause a copy thereof to be given to the probationer or sent to him by registered post or by the recorded delivery service; and an acknowledgement or certificate of delivery of a letter containing such copy order issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgement or certificate.

229 Probation orders: additional requirements.

(1) Subject to section 230 of this Act, a probation order may 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—

(a) conducive to securing the good conduct of the offender or for preventing a repetition by him of the offence or the commission of other offences; or

(b) where the probation order is to include such a requirement as is mentioned in subsection (4) or (6) below, conducive to securing or, as the case may be, preventing the matters mentioned in paragraph (a) above.

(2) Without prejudice to the generality of subsection (1) above, a probation order may, subject to subsection (3) below, include requirements relating to the residence of the offender.

(3) In relation to a probation order including a requirement such as is mentioned in subsection (2) above—

(a) before making the order, the court shall consider the home surroundings of the offender; and

(b) if 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.

(4) Without prejudice to the generality of subsection (1) above, where an offender has been convicted of an offence punishable by imprisonment and a court which is considering making a probation order—

(a) is satisfied that the offender is of or over 16 years of age and that the conditions specified in paragraphs (a) and (c) of section 238(2) of this Act for the making of a community service order have been met;

(b) has been notified by the Secretary of State that arrangements exist for persons who reside in the locality where the offender resides, or will be residing when the probation order comes into force, to perform unpaid work as a requirement of a probation order; and

(c) is satisfied that provision can be made under the arrangements mentioned in paragraph (b) above for the offender to perform unpaid work under the probation order,

it may include in the probation order, in addition to any other requirement, a requirement that the offender shall perform unpaid work for such number of hours (being in total not less than 40 nor more than 240) as may be specified in the probation order.

(5) Sections 238 (except subsections (1), (2)(b) and (d) and (4)(b)), 239(1) to (3), and 240 of this Act shall apply, subject to any necessary modifications, to a probation order including a requirement such as is mentioned in subsection (4) above as they apply to a community service order, and in the application of subsection (5) of the said section 238 for the words "subsection (1) above" there shall be substituted the words " subsection (4) of section 229 of this Act ".

(6) Without prejudice to the generality of subsection (1) above, where a court is considering making a probation order it may include in the probation order, in addition to any other requirement, a requirement that the offender shall pay compensation either in a lump sum or by instalments for any personal injury, loss or damage caused (whether directly or indirectly) by the acts which constituted the offence; and the following provisions of this Act shall apply to such a requirement as if any reference in them to a compensation order included a reference to a requirement to pay compensation under this subsection—

section 249(3) to (5), (8) to (10);

section 250(2);

section 251(1) and (2)(b);

section 253.

(7) Where the court imposes a requirement to pay compensation under subsection (6) above—

(a) it shall be a condition of a probation order containing such a requirement that payment of the compensation shall be completed not more than 18 months after the making of the order or not later than two months before the end of the period of probation, whichever first occurs;

(b) the court, on the application of the offender or the officer of the local authority responsible for supervising the offender, may vary the terms of the requirement, including the amount of any instalments, in consequence of any change which may have occurred in the circumstances of the offender; and

(c) in any proceedings for breach of a probation order where the breach consists only in the failure to comply with a requirement to pay compensation, a document purporting to be a certificate signed by the clerk of the court for the time being having jurisdiction in relation to the order that the compensation or, where payment by instalments has been allowed, any instalment has not been paid shall be sufficient evidence of such breach.

VALID FROM 08/02/2006

[F205 229A Probation progress review

(1) A court may, in making a probation order, provide for the order to be reviewed at a hearing held for the purpose by the court.

(2) The officer responsible for the probationer's supervision is, before the hearing, to make a report in writing to the court on the probationer's progress under the order.

(3) The probationer must, and that officer may, attend the hearing.

(4) The hearing may be held whether or not the prosecutor elects to attend.

(5) Where the probationer fails to attend the hearing the court may issue a warrant for his arrest.

(6) At the hearing the court, after considering the report made under subsection (2) above, may amend the probation order.

(7) But before amending the order the court is to explain to the probationer, in ordinary language, the effect of making the amendment; and may proceed to make it only if the probationer expresses his willingness to comply with the requirements of the order as amended.

(8) Sub-paragraph (2) of paragraph 3 of Schedule 6 to this Act applies to amending under subsection (6) above as that sub-paragraph applies to amending under sub-paragraph (1) of that paragraph.

(9) At the hearing the court may provide for the order to be reviewed again at a subsequent hearing held for the purpose by the court; and subsections (2) to (8) above and this subsection apply in relation to a review under this subsection as they apply in relation to a review under subsection (1) above.**]**

Textual Amendments

F205 S. 229A inserted (8.2.2006) by Management of Offenders etc. (Scotland) Act 2005 (asp 14), **ss. 12(2)**, 24; S.S.I. 2006/48, **art. 3(1)**, Sch. Pt. 1 (subject to art. 3((3))

230 Probation orders: requirement of treatment for mental condition.

(1) Where the court is satisfied, on the evidence of a registered medical practitioner approved for the purposes of section 20 or 39 of the M83 Mental Health (Scotland) Act 1984, 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 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 in the order, to treatment by or under the direction of a registered medical practitioner or chartered psychologist with a view to the improvement of the offender's mental condition.

(2) The treatment required by virtue of subsection (1) above 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 said Act of 1984, not being a State hospital within the meaning of the 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 or chartered psychologist as may be specified in the order,

but otherwise the nature of the treatment shall not be specified in the order.

(3) A court shall not make a probation order containing a requirement under subsection (1) above 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) Where the registered medical practitioner or chartered psychologist by whom or under whose direction a probationer is receiving any of the kinds of treatment to which he is required to submit in pursuance of a probation order is of the opinion—

(a) that the probationer requires, or that it would be more appropriate for him to receive, a different kind of treatment (whether in whole or in part) from that which he has been receiving, being treatment of a kind which subject to subsection (5) below could have been specified in the probation order; or

(b) that the treatment (whether in whole or in part) can be more appropriately given in or at a different institution or place from that where he has been receiving treatment in pursuance of the probation order,

he may, subject to subsection (6) below, make arrangements for the probationer to be treated accordingly.

(5) Arrangements made under subsection (4) above may provide for the probationer to receive his treatment (in whole or in part) as a resident patient in an institution or place notwithstanding that it is not one which could have been specified for that purpose in the probation order.

(6) Arrangements shall not be made under subsection (4) above unless—

(a) the probationer and any officer responsible for his supervision agree;

(b) the treatment will be given by or under the direction of a registered medical practitioner or chartered psychologist who has agreed to accept the probationer as his patient; and

(c) where such treatment entails the probationer's being a resident patient, he will be received as such.

(7) Where any such arrangements as are mentioned in subsection (4) above are made for the treatment of a probationer—

(a) any officer responsible for the probationer's supervision shall notify the appropriate court of the arrangements; 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.

(8) Subsections (3) to (5) of section 61 of this Act shall apply for the purposes of this section as if for the reference in subsection (3) to section 58(1)(a) of this Act there were substituted a reference to subsection (1) above.

(9) 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.

Marginal Citations
M83 1984 c.36.

VALID FROM 27/06/2003

[F206 230A Requirement for remote monitoring in probation order

(1) Without prejudice to section 245D of this Act, a probation order may include a requirement that during such period as may be specified in the requirement, being a period not exceeding twelve months, the probationer comply with such restrictions as to his movements as the court thinks fit; and paragraphs (a) and (b) of subsection (2) of section 245A of this Act (with the qualification of paragraph (a) which that subsection contains) shall apply in relation to any such requirement as they apply in relation to a restriction of liberty order.

(2) The clerk of the court shall cause a copy of a probation order which includes such a requirement to be sent to the person who is to be responsible for monitoring the probationer's compliance with the requirement.

(3) If, within the period last specified by virtue of subsection (1) above or section 231(1) of this Act, it appears to the person so responsible that the probationer has failed to comply with the requirement the person shall so inform the supervising officer appointed by virtue of section 228(3) of this Act, who shall report the matter to the court.

(4) Section 245H shall apply in relation to proceedings under section 232 of this Act as respects a probation order which includes such a requirement as it applies in relation to proceedings under section 245F of this Act.

(5) Sections 245A(6) and (8) to (11), 245B and 245C of this Act shall apply in relation to the imposition of, or as the case may be compliance with, requirements included by virtue of subsection (1) above in a probation order as those sections apply in relation to the making of, or as the case may be compliance with, a restriction of liberty order.

(6) In relation to a probation order which includes such a requirement—

(a) the persons who may make an application under paragraph 3(1) of Schedule 6 to this Act shall include the person responsible for monitoring the probationer's compliance with the requirement, but only in so far as the application relates to the requirement; and

(b) a copy of any application under that paragraph by—

(i) the probationer or the supervising officer shall be sent by the applicant to the person so responsible; or

(ii) the person so responsible shall be sent by the applicant to the probationer and the supervising officer.

(7) Where under section 232(2)(c) of, or Schedule 6 to, this Act the court varies such a requirement, the clerk of court shall cause a copy of the amended probation order to be sent—

(a) to the person so responsible; and

(b) where the variation comprises a change in who is designated for the purposes of such monitoring, to the person who, immediately before the order was varied, was so responsible.**]**

Textual Amendments

F206 S. 230A inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 46(2)**, 89; S.S.I. 2003/288, **art. 2**, Sch.

231 Probation orders: amendment and discharge.

(1) Schedule 6 to this Act shall have effect in relation to the discharge and amendment of probation orders.

(2) Where, under section 232 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.

232 Probation orders: failure to comply with requirement.

(1) If, on information from—

(a) the officer supervising the probationer;

(b) the chief social work officer of the local authority whose officer is supervising the probationer; or

(c) an officer appointed by the chief social work officer to act on his behalf for the purposes of this subsection,

it appears to the court which made the probation order or to the appropriate court that the probationer has failed to comply with any requirement 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 subsection (1) above that he has failed to comply with a requirement of the probation order, the court may—

(a) except in the case of a failure to comply with a requirement to pay compensation and without prejudice to the continuance in force of the probation order, impose a fine not exceeding level 3 on the standard scale; or

(b) sentence the offender for the offence for which the order was made; 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; or

(d) without prejudice to the continuance in force of the probation order, in a case where the conditions required by sections 238 to 244 of this Act are satisfied, make a community service order, and those sections shall apply to such an order as if the failure to comply with the requirement of the probation order were the offence in respect of which the order had been made.

(3) For the purposes of subsection (2) above, evidence of one witness shall be sufficient evidence.

(4) 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 or a penalty imposed on a person summarily convicted.

(5) 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.

(6) Without prejudice to section 233 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.

(7) The citation of a probationer to appear before a court of summary jurisdiction in terms of subsection (1) above or section 233(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 under section 141 of this Act.

233 Probation orders: commission of further offence.

(1) If it appears to—

(a) the court which made a probation order; or, as the case may be,

(b) the appropriate court,

in this section referred to as "the 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 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, and on his appearance or on his being brought before the court, the court may, if it thinks fit, deal with him under section 232(2)(b) of this Act.

(2) Where a probationer is convicted by the court of an offence committed during the probation period, the court may, if it thinks fit, deal with him under section 232(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.

(3) Where—

(a) a court has, under section 229(4) of this Act, included in a probation order a requirement that an offender shall perform unpaid work; and

(b) the offender is convicted of an offence committed in the circumstances mentioned in subsection (4) below,

the court which sentences him for the offence shall, in determining the appropriate sentence for that offence, have regard to the fact that the offence was committed in those circumstances.

(4) The circumstances referred to in subsection (3) above are that the offence was committed—

(a) during the period that the offender was subject to a requirement to perform unpaid work or within the period of three months following the expiry of that period; and

(b) in any place where the unpaid work was being or had previously been performed.

(5) The court shall not, under subsection (3) above, have regard to the fact that the offence was committed in the circumstances mentioned in subsection (4) above unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.

[F207(6) The fact that the offence mentioned in subsection (3)(b) above was committed in the circumstances mentioned in subsection (4) above shall, unless challenged—

(a) in the case of proceedings on indictment, by giving notice of a preliminary objection under paragraph (b) of section 72(1) of this Act or under that paragraph as applied by section 71(2) of this Act; or

(b) in summary proceedings, by preliminary objection before his plea is recorded,

be held as admitted.**]**

Textual Amendments

F207 S. 233(6) inserted (1.8.1997) by 1997 c. 48, **s. 26(1)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

234 Probation orders: persons residing in England and Wales.

(1) Where the court which made a probation order to which this subsection applies is satisfied that the offender has attained the age of 16 years and resides or will reside in England and Wales, subsections (3) and (4) of section 228 of this Act shall not apply to the order, but—

(a) 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

(b) that area shall be named in the order,

and where the order includes a requirement that the probationer performs unpaid work for a number of hours, the number specified shall not exceed one hundred.

(2) Subsection (1) above applies to a probation order which is made under the said section 228 but does not include a requirement which would, if made, correspond to a requirement mentioned in paragraph 2 or 3 of Schedule 1A to the 1973 Act, but would, if included in a probation order made under that Act, fail to accord with a restriction as to days of presentation, participation or attendance mentioned in paragraph 2(4)(a) or (6)(a), or as the case may be 3(3)(a), of that Schedule.

(3) Where a probation order has been made under the said section 228 and the court in Scotland which made the order or the appropriate court is satisfied—

(a) that the probationer has attained the age of 16 years;

(b) that he proposes to reside, or is residing, in England and Wales; and

(c) that suitable arrangements for his supervision can be made by the probation committee for the area which contains the petty sessions area in which he resides or will reside,

the power of that court to amend the order under Schedule 6 to this Act shall include power to insert the provisions required by subsection (1) above or to vary any requirement for performance of unpaid work so that such hours as remain to be worked do not exceed one hundred, and the court may so amend the order without summoning the probationer and without his consent.

(4) A probation order made or amended by virtue of this section may, notwithstanding section 230(9) of this Act, include a requirement that the probationer shall submit to treatment for his mental condition, and—

(a) subsections (1), (3) and (8) of the said section 230 and paragraph 5(3) of Schedule 1A to the 1973 Act (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 the said section 230 and paragraph 5 of the said Schedule 1A respectively; and

(b) sub-paragraphs (5) to (7) of the said paragraph 5 (functions of supervising officer and registered medical practitioner where such a requirement has been imposed) shall apply in relation to a probationer who is undergoing treatment in England and Wales 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.

(5) Sections 231(1) and 232(1) of this Act shall not apply to any order made or amended under this section; but subject to subsection (6) below, Schedule 2 to the 1991 Act shall apply to the order—

(a) except in the case mentioned in paragraph (b) below, as if that order were a probation order made under section 2 of the 1973 Act; and

(b) in the case of an order which contains a requirement such as is mentioned in section 229(4) of this Act, as if it were a combination order made under section 11 of the 1991 Act.

(6) Part III of Schedule 2 to the 1991 Act shall not apply as mentioned in subsection (5) above; and sub-paragraphs (3) and (4) of paragraph 3 of that Schedule shall so apply as if for the first reference in the said sub-paragraph (3) to the Crown Court there were substituted a reference to a court in Scotland and for other references in those sub-paragraphs to the Crown Court there were substituted references to the court in Scotland.

(7) If it appears on information to a justice acting for the petty sessions area named in a probation order made or amended under this section that the person to whom the order relates 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) a summons requiring that person to appear, at the place and time specified in the summons, before the court in Scotland which made the probation order; or

(b) if the information is in writing and on oath, a warrant for his arrest, directing that person to be brought before the last-mentioned court.

(8) If a warrant for the arrest of a probationer issued under section 233 of this Act by a court is executed in England and Wales 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.

(9) 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 in the order, 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.

(10) Where a probation order which is amended under subsection (3) above is an order to which the provisions of this Act apply by virtue of section 10 of the 1973 Act (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 and Wales.

(11) In this section—

"the 1973 Act" means the [M84]Powers of Criminal Courts Act 1973; and

"the 1991 Act" means the [M85]Criminal Justice Act 1991.

Extent Information

E2 S. 234(4)to(11) extend to G.B.

Marginal Citations

M84 1973 c.62.

M85 1991 c.53.

[F208 Non-harassment orders]

Textual Amendments

F208 S. 234A and cross-heading inserted (16.6.1997) by 1997 c. 40, **s. 11**; S.I. 1997/1418, **art. 2**

[F209 234A Non-harassment orders.

(1) Where a person is convicted of an offence involving harassment of a person ("the victim"), the prosecutor may apply to the court to make a non-harassment order against the offender requiring him to refrain from such conduct in relation to the victim as may be specified in the order for such period (which includes an indeterminate period) as may be so specified, in addition to any other disposal which may be made in relation to the offence.

(2) On an application under subsection (1) above the court may, if it is satisfied on a balance of probabilities that it is appropriate to do so in order to protect the victim from further harassment, make a non-harassment order.

(3) A non-harassment order made by a criminal court shall be taken to be a sentence for the purposes of any appeal and, for the purposes of this subsection "order" includes any variation or revocation of such an order made under subsection (6) below.

(4) Any person who is found to be in breach of a non-harassment order shall be guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both such imprisonment and such fine; and

(b) on summary conviction, to imprisonment for a period not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both such imprisonment and such fine.

F210(5) . . . . . .

(6) The person against whom a non-harassment order is made, or the prosecutor at whose instance the order is made, may apply to the court which made the order for its revocation or variation and, in relation to any such application the court concerned may, if it is satisfied on a balance of probabilities that it is appropriate to do so, revoke the order or vary it in such manner as it thinks fit, but not so as to increase the period for which the order is to run.

(7) For the purposes of this section "harassment" shall be construed in accordance with section 8 of the Protection from Harassment Act 1997.**]**

Textual Amendments

F209 S. 234A inserted (16.6.1997) by 1997 c. 40, **s. 11**; S.I. 1997/1418, **art. 2**

F210 S. 234A(5) repealed (1.8.1997) by 1997 c. 48, s. 62(1)(2), Sch. 1 para. 21(30), **Sch. 3**; S.I. 1997/1712, **art. 3 Sch.** (subject to arts. 4, 5)

VALID FROM 30/09/1998

[F211234B Drug treatment and testing order.

(1) This section applies where a person of 16 years of age or more is convicted of an offence, other than one for which the sentence is fixed by law, committed on or after the date on which section 89 of the Crime and Disorder Act 1998 comes into force.

(2) Subject to the provisions of this section, the court by or before which the offender is convicted may, if it is of the opinion that it is expedient to do so instead of sentencing him, make an order (a "drug treatment and testing order") which shall—

(a) have effect for a period specified in the order of not less than six months nor more than three years ("the treatment and testing period"); and

(b) include the requirements and provisions mentioned in section 234C of this Act.

(3) A court shall not make a drug treatment and testing order unless it—

(a) has been notified by the Secretary of State that arrangements for implementing such orders are available in the area of the local authority proposed to be specified in the order under section 234C(6) of this Act and the notice has not been withdrawn;

(b) has obtained a report by, and if necessary heard evidence from, an officer of the local authority in whose area the offender is resident about the offender and his circumstances; and

(c) is satisfied that—

(i) the offender is dependent on, or has a propensity to misuse, drugs;

(ii) his dependency or propensity is such as requires and is susceptible to treatment; and

(iii) he is a suitable person to be subject to such an order.

(4) For the purpose of determining for the purposes of subsection (3)(c) above whether the offender has any drug in his body, the court may by order require him to provide samples of such description as it may specify.

(5) A drug treatment and testing order or an order under subsection (4) above shall not be made unless the offender expresses his willingness to comply with its requirements.

(6) The Secretary of State may by order—

(a) amend paragraph (a) of subsection (2) above by substituting a different period for the minimum or the maximum period for the time being specified in that paragraph; and

(b) make such transitional provisions as appear to him necessary or expedient in connection with any such amendment.

(7) The power to make an order under subsection (6) above shall be exercisable by statutory instrument; but no such order shall be made unless a draft of the order has been laid before and approved by resolution of each House of Parliament.

(8) A drug treatment and testing order shall be as nearly as may be in the form prescribed by Act of Adjournal.**]**

Textual Amendments

F211 S. 234B inserted (30.9.1998) by 1998 c. 37, **s. 89**; S.I. 1998/2327, **art. 2(1)(s)** (subject to arts. 5-8)

VALID FROM 30/09/1998

[F212234C Requirements and provisions of drug treatment and testing orders.

(1) A drug treatment and testing order shall include a requirement ("the treatment requirement") that the offender shall submit, during the whole of the treatment and testing period, to treatment by or under the direction of a specified person having the necessary qualifications or experience ("the treatment provider") with a view to the reduction or elimination of the offender's dependency on or propensity to misuse drugs.

(2) The required treatment for any particular period shall be—

(a) treatment as a resident in such institution or place as may be specified in the order; or

(b) treatment as a non-resident in or at such institution or place, and at such intervals, as may be so specified;

but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a) or (b) above.

(3) A court shall not make a drug treatment and testing order unless it is satisfied that arrangements have been made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is required to submit to treatment as a resident).

(4) A drug treatment and testing order shall include a requirement ("the testing requirement") that, for the purpose of ascertaining whether he has any drug in his body during the treatment and testing period, the offender shall provide during that period, at such times and in such circumstances as may (subject to the provisions of the order) be determined by the treatment provider, samples of such description as may be so determined.

(5) The testing requirement shall specify for each month the minimum number of occasions on which samples are to be provided.

(6) A drug treatment and testing order shall specify the local authority in whose area the offender will reside when the order is in force and require that authority to appoint or assign an officer (a "supervising officer") for the purposes of subsections (7) and (8) below.

(7) A drug treatment and testing order shall—

(a) provide that, for the treatment and testing period, the offender shall be under the supervision of a supervising officer;

(b) require the offender to keep in touch with the supervising officer in accordance with such instructions as he may from time to time be given by that officer, and to notify him of any change of address; and

(c) provide that the results of the tests carried out on the samples provided by the offender in pursuance of the testing requirement shall be communicated to the supervising officer.

(8) Supervision by the supervising officer shall be carried out to such extent only as may be necessary for the purpose of enabling him—

(a) to report on the offender's progress to the appropriate court;

(b) to report to that court any failure by the offender to comply with the requirements of the order; and

(c) to determine whether the circumstances are such that he should apply to that court for the variation or revocation of the order.**]**

Textual Amendments

F212 S. 234C inserted (30.9.1998) by 1998 c. 37, **s. 90**; S.I. 1998/2327, **art. 2(1)(s)** (subject to arts. 5-8)

VALID FROM 27/06/2003

234CA Requirement for remote monitoring in drug treatment and testing order

(1) A drug treatment and testing order may include a requirement that during such period as may be specified in the requirement, being a period not exceeding twelve months,

the offender comply with such restrictions as to his movements as the court thinks fit; and paragraphs (a) and (b) of subsection (2) of section 245A of this Act (with the qualification of paragraph (a) which that subsection contains) shall apply in relation to any such requirement as they apply in relation to a restriction of liberty order.

(2) The clerk of the court shall cause a copy of a drug treatment and testing order which includes such a requirement to be sent to the person who is to be responsible for monitoring the offender's compliance with the requirement.

(3) If, within the period last specified by virtue of subsection (1) above or (6)(d) below, it appears to the person so responsible that the offender has failed to comply with the requirement the person shall so inform the supervising officer appointed by virtue of section 234C(6) of this Act, who shall report the matter to the court.

(4) Section 245H shall apply in relation to proceedings under section 234G of this Act as respects a drug treatment and testing order which includes such a requirement as it applies in relation to proceedings under section 245F of this Act.

(5) Sections 245A(6) and (8) to (11), 245B and 245C of this Act shall apply in relation to the imposition of, or as the case may be compliance with, requirements included by virtue of subsection (1) above in a drug treatment and testing order as those sections apply in relation to the making of, or as the case may be compliance with, a restriction of liberty order.

(6) In relation to a drug testing order which includes such a requirement, section 234E of this Act shall apply with the following modifications—

(a) the persons who may make an application under subsection (1) of that section shall include the person responsible for monitoring the offender's compliance with the requirement, but only in so far as the application relates to the requirement;

(b) the reference in subsection (2) of that section to the supervising officer shall be construed as a reference to either that officer or the person so responsible;

(c) where an application is made under subsection (1) of that section and relates to the requirement, the persons to be heard under subsection (3) of that section shall include the person so responsible;

(d) the ways of varying the order which are mentioned in subsection (3)(a) of that section shall include increasing or decreasing the period specified by virtue of subsection (1) above (or last specified by virtue of this paragraph) but not so as to increase that period above the maximum mentioned in subsection (1) above; and

(e) the reference in subsection (5) of that section—

(i) to the supervising officer shall be construed as a reference to either that officer or the person so responsible; and

(ii) to sections 234B(5) and 234D(1) shall be construed as including a reference to section 245A(6) and (11).

(7) Where under section 234E or 234G(2)(b) of this Act the court varies such a requirement, the clerk of court shall cause a copy of the amended drug treatment and testing order to be sent—

(a) to the person responsible for monitoring the offender's compliance with the requirement; and

(b) where the variation comprises a change in who is designated for the purposes of such monitoring, to the person who, immediately before the order was varied, was so responsible.

VALID FROM 30/09/1998

[F213 234D Procedural matters relating to drug treatment and testing orders.

(1) Before making a drug treatment and testing order, a court shall explain to the offender in ordinary language—

(a) the effect of the order and of the requirements proposed to be included in it;

(b) the consequences which may follow under section 234G of this Act if he fails to comply with any of those requirements;

(c) that the court has power under section 234E of this Act to vary or revoke the order on the application of either the offender or the supervising officer; and

(d) that the order will be periodically reviewed at intervals provided for in the order.

(2) Upon making a drug treatment and testing order the court shall—

(a) give, or send by registered post or the recorded delivery service, a copy of the order to the offender;

(b) send a copy of the order to the treatment provider;

(c) send a copy of the order to the chief social work officer of the local authority specified in the order in accordance with section 234C(6) of this Act; and

(d) where it is not the appropriate court, send a copy of the order (together with such documents and information relating to the case as are considered useful) to the clerk of the appropriate court.

(3) Where a copy of a drug treatment and testing order has under subsection (2)(a) been sent by registered post or by the recorded delivery service, an acknowledgment or certificate of delivery of a letter containing a copy order issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgement or certificate.**]**

Textual Amendments

F213 S. 234D inserted (30.9.1998) by 1998 c. 37, **s. 91**; S.I. 1998/2327, **art. 2(1)(s)** (subject to arts. 5-8)

VALID FROM 30/09/1998

[F214 234E Amendment of drug treatment and testing order.

(1) Where a drug treatment and testing order is in force either the offender or the supervising officer may apply to the appropriate court for variation or revocation of the order.

(2) Where an application is made under subsection (1) above by the supervising officer, the court shall issue a citation requiring the offender to appear before the court.

(3) On an application made under subsection (1) above and after hearing both the offender and the supervising officer, the court may by order, if it appears to it in the interests of justice to do so—

(a) vary the order by—

(i) amending or deleting any of its requirements or provisions;

(ii) inserting further requirements or provisions; or

(iii) subject to subsection (4) below, increasing or decreasing the treatment and testing period; or

(b) revoke the order.

(4) The power conferred by subsection (3)(a)(iii) above shall not be exercised so as to increase the treatment and testing period above the maximum for the time being specified in section 234B(2)(a) of this Act, or to decrease it below the minimum so specified.

(5) Where the court, on the application of the supervising officer, proposes to vary (otherwise than by deleting a requirement or provision) a drug treatment and testing order, sections 234B(5) and 234D(1) of this Act shall apply to the variation of such an order as they apply to the making of such an order.

(6) If an offender fails to appear before the court after having been cited in accordance with subsection (2) above, the court may issue a warrant for his arrest.**]**

Textual Amendments

F214 S. 234E inserted (30.9.1998) by 1998 c. 37, **s. 92**; S.I. 1998/2327, **art. 2(1)(s)** (subject to arts. 5-8)

VALID FROM 30/09/1998

[F215 234F Periodic review of drug treatment and testing order.

(1) A drug treatment and testing order shall—

(a) provide for the order to be reviewed periodically at intervals of not less than one month;

(b) provide for each review of the order to be made, subject to subsection (5) below, at a hearing held for the purpose by the appropriate court (a "review hearing");

(c) require the offender to attend each review hearing;

(d) provide for the supervising officer to make to the court, before each review, a report in writing on the offender's progress under the order; and

(e) provide for each such report to include the test results communicated to the supervising officer under section 234C(7)(c) of this Act and the views of the treatment provider as to the treatment and testing of the offender.

(2) At a review hearing the court, after considering the supervising officer's report, may amend any requirement or provision of the order.

(3) The court—

(a) shall not amend the treatment or testing requirement unless the offender expresses his willingness to comply with the requirement as amended;

(b) shall not amend any provision of the order so as reduce the treatment and testing period below the minimum specified in section 234B(2)(a) of this Act or to increase it above the maximum so specified; and

(c) except with the consent of the offender, shall not amend any requirement or provision of the order while an appeal against the order is pending.

(4) If the offender fails to express his willingness to comply with the treatment or testing requirement as proposed to be amended by the court, the court may revoke the order.

(5) If at a review hearing the court, after considering the supervising officer's report, is of the opinion that the offender's progress under the order is satisfactory, the court may so amend the order as to provide for each subsequent review to be made without a hearing.

(6) A review without a hearing shall take place in chambers without the parties being present.

(7) If at a review without a hearing the court, after considering the supervising officer's report, is of the opinion that the offender's progress is no longer satisfactory, the court may issue a warrant for the arrest of the offender or may, if it thinks fit, instead of issuing a warrant in the first instance, issue a citation requiring the offender to appear before that court as such time as may be specified in the citation.

(8) Where an offender fails to attend—

(a) a review hearing in accordance with a requirement contained in a drug treatment and testing order; or

(b) a court at the time specified in a citation under subsection (7) above,

the court may issue a warrant for his arrest.

(9) Where an offender attends the court at a time specified by a citation issued under subsection (7) above—

(a) the court may exercise the powers conferred by this section as if the court were conducting a review hearing; and

(b) so amend the order as to provide for each subsequent review to be made at a review hearing.**]**

Textual Amendments

F215 S. 234F inserted (30.9.1998) by 1998 c. 37, **s. 92**, S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)

VALID FROM 30/09/1998

[F216234GBreach of drug treatment testing order.

(1) If at any time when a drug treatment and testing order is in force it appears to the appropriate court that the offender has failed to comply with any requirement of the order, the court may issue a citation requiring the offender to appear before the court at such time as may be specified in the citation or, if it appears to the court to be appropriate, it may issue a warrant for the arrest of the offender.

(2) If it is proved to the satisfaction of the appropriate court that the offender has failed without reasonable excuse to comply with any requirement of the order, the court may by order—

(a) without prejudice to the continuation in force of the order, impose a fine not exceeding level 3 on the standard scale;

(b) vary the order; or

(c) revoke the order.

(3) For the purposes of subsection (2) above, the evidence of one witness shall be sufficient evidence.

(4) A fine imposed under this section in respect of a failure to comply with the requirements of a drug treatment and testing 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 or a penalty imposed on a person summarily convicted.**]**

Textual Amendments

F216 S. 234G inserted (30.9.1998) by 1998 c. 37, **s. 93**; S.I. 1998/2327, **art. 2(1)(s)** (subject to arts. 5-8)

VALID FROM 30/09/1998

[F217234HDisposal on revocation of drugs treatment and testing order.

(1) Where the court revokes a drugs treatment and testing order under section 234E(3)(b), 234F(4) or 234G(2)(c) of this Act, it may dispose of the offender in any way which would have been competent at the time when the order was made.

(2) In disposing of an offender under subsection (1) above, the court shall have regard to the time for which the order has been in operation.

(3) Where the court revokes a drug treatment and testing order as mentioned in subsection (1) above and the offender is subject to—

(a) a probation order, by virtue of section 234J of this Act; or

(b) a restriction of liberty order, by virtue of section 245D of this Act; or

(c) a restriction of liberty order and a probation order, by virtue of the said section 245D,

the court shall, before disposing of the offender under subsection (1) above—

(i) where he is subject to a probation order, discharge that order;

(ii) where he is subject to a restriction of liberty order, revoke that order; and

(iii) where he is subject to both such orders, discharge the probation order and revoke the restriction of liberty order.**]**

Textual Amendments

F217 S. 234H inserted (30.9.1998) by 1998 c. 37, **s. 93**; S.I. 1998/2327, **art. 2(1)(s)** (subject to arts. 5-8)

VALID FROM 30/09/1998

[F218 234J Concurrent drug treatment and testing and probation orders.

(1) Notwithstanding sections 228(1) and 234B(2) of this Act, where the court considers it expedient that the offender should be subject to a drug treatment and testing order and to a probation order, it may make both such orders in respect of the offender.

(2) In deciding whether it is expedient for it to exercise the power conferred by subsection (1) above, the court shall have regard to the circumstances, including the nature of the offence and the character of the offender and to the report submitted to it under section 234B(3)(b) of this Act.

(3) Where the court makes both a drug treatment and testing order and a probation order by virtue of subsection (1) above, the clerk of the court shall send a copy of each of the orders to the following—

(a) the treatment provider within the meaning of section 234C(1);

(b) the officer of the local authority who is appointed or assigned to be the supervising officer under section 234C(6) of this Act; and

(c) if he would not otherwise receive a copy of the order, the officer of the local authority who is to supervise the probationer.

(4) Where the offender by an act or omission fails to comply with a requirement of an order made by virtue of subsection (1) above—

(a) if the failure relates to a requirement contained in a probation order and is dealt with under section 232(2)(c) of this Act, the court may, in addition, exercise the power conferred by section 234G(2)(b) of this Act in relation to the drug treatment and testing order; and

(b) if the failure relates to a requirement contained in a drug treatment and testing order and is dealt with under section 234G(2)(b) of this Act, the court may, in addition, exercise the power conferred by section 232(2)(c) of this Act in relation to the probation order.

(5) Where an offender by an act or omission fails to comply with both a requirement contained in a drug treatment and testing order and in a probation order to which he is subject by virtue of subsection (1) above, he may, without prejudice to subsection (4) above, be dealt with as respects that act or omission either under section 232(2) of this Act or under section 234G(2) of this Act but he shall not be liable to be otherwise dealt with in respect of that act or omission.**]**

Textual Amendments

F218 S. 234J inserted "after s. 234H" (30.9.1998) by virtue of 1998 c. 37, **s. 94(1)**; S.I. 1998/2327, **art. 2(1)(s)** (subject to arts. 5-8)

VALID FROM 30/09/1998

[F219 234K Drug treatment and testing orders: interpretation.

In sections 234B to 234J of this Act—

"the appropriate court" means—

(a) where the drug treatment and testing order has been made by the High Court, that court;

(b) in any other case, the court having jurisdiction in the area of the local authority for the time being specified in the order under section 234C(6) of this Act, being a sheriff or district court according to whether the order has been made by a sheriff or district court, but in a case where an order has been made by a district court and there is no district court in that area, the sheriff court; and

"local authority" means a council constituted under section 2 of the M86 Local Government etc. (Scotland) Act 1994 and any reference to the area of such an authority is a reference to the local government area within the meaning of that Act for which it is so constituted.**]**

Textual Amendments

F219 S. 234K inserted (30.9.1998) by 1998 c. 37, **s. 95(1)**; S.I. 1998/2327, **art. 2(1)(s)** (subject to arts. 5-8)

Marginal Citations

M86 1994 c.39.

VALID FROM 28/10/2004

[F220 Antisocial behaviour orders

Textual Amendments

F220 Ss. 234AA, 234AB and cross-heading inserted (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 118**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1

234AA Antisocial behaviour orders

(1) Where subsection (2) below applies, the court may, instead of or in addition to imposing any sentence which it could impose, make an antisocial behaviour order in respect of a person (the "offender").

(2) This subsection applies where—

(a) the offender is convicted of an offence;

(b) at the time when he committed the offence, the offender was at least 12 years of age;

(c) in committing the offence, he engaged in antisocial behaviour; and

(d) the court is satisfied, on a balance of probabilities, that the making of an antisocial behaviour order is necessary for the purpose of protecting other persons from further antisocial behaviour by the offender.

(3) For the purposes of subsection (2)(c) above, a person engages in antisocial behaviour if he—

(a) acts in a manner that causes or is likely to cause alarm or distress; or

(b) pursues a course of conduct that causes or is likely to cause alarm or distress,

to at least one person who is not of the same household as him.

(4) Subject to subsection (5) below, an antisocial behaviour order is an order which prohibits, indefinitely or for such period as may be specified in the order, the offender from doing anything described in the order.

(5) The prohibitions that may be imposed by an antisocial behaviour order are those necessary for the purpose of protecting other persons from further antisocial behaviour by the offender.

(6) Before making an antisocial behaviour order, the court shall explain to the offender in ordinary language—

(a) the effect of the order and the prohibitions proposed to be included in it;

(b) the consequences of failing to comply with the order;

(c) the powers the court has under subsection (8) below; and

(d) the entitlement of the offender to appeal against the making of the order.

(7) Failure to comply with subsection (6) shall not affect the validity of the order.

(8) On the application of the offender in respect of whom an antisocial behaviour order is made under this section, the court which made the order may, if satisfied on a balance of probabilities that it is appropriate to do so—

(a) revoke the order; or

(b) subject to subsection (9) below, vary it in such manner as it thinks fit.

(9) Where an antisocial behaviour order specifies a period, the court may not, under subsection (8)(b) above, vary the order by extending the period.

(10) An antisocial behaviour order made under this section, and any revocation or variation of such an order under subsection (8) above, shall be taken to be a sentence for the purposes of an appeal.

(11) Sections 9 and 11 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) (which provide that breach of an antisocial behaviour order made under that Act is an offence for which a person is liable to be arrested without warrant) shall apply in relation to antisocial behaviour orders made under this section as those sections apply in relation to antisocial behaviour orders made under section 4 of that Act.

(12) In this section, "conduct" includes speech; and a course of conduct must involve conduct on at least two occasions.

234AB Antisocial behaviour orders: notification

(1) Upon making an antisocial behaviour order under section 234AA of this Act, the court shall—

(a) serve a copy of the order on the offender; and

(b) give a copy of the order to the local authority it considers most appropriate.

(2) Upon revoking an antisocial behaviour order under subsection (8)(a) of that section, the court shall notify the local authority to whom a copy of the order was given under subsection (1)(b) above.

(3) Upon varying an antisocial behaviour order under subsection (8)(b) of that section, the court shall—

(a) serve a copy of the order as varied on the offender; and

(b) give a copy of the order as varied to the local authority to whom a copy of the order was given under subsection (1)(b) above.

(4) For the purposes of this section, a copy is served on an offender if—

(a) given to him; or

(b) sent to him by registered post or the recorded delivery service.

(5) A certificate of posting of a letter sent under subsection (4)(b) issued by the postal operator shall be sufficient evidence of the sending of the letter on the day specified in such certificate.

(6) In this section, "offender" means the person in respect of whom the antisocial behaviour order was made.**]**

Supervised attendance

235 Supervised attendance orders.

(1) A court may make a supervised attendance order in the circumstances specified in subsection (3) below and shall, subject to paragraph 1 of Schedule 7 to this Act, make such an order where subsection (4) below applies.

(2) A supervised attendance order is an order made by a court in respect of an offender requiring him—

(a) to attend a place of supervision for such period, being a period of not less than 10 hours and not more than—

(i) where the amount of the fine, part or instalment which the offender has failed to pay does not exceed level 1 on the standard scale, 50 hours; and

(ii) in any other case, 100 hours, as is specified in the order; and

(b) during that period, to carry out such instructions as may be given to him by the supervising officer.

(3) The circumstances referred to in subsection (1) above are where—

(a) the offender is of or over 18 years of age; and

(b) having been convicted of an offence, he has had imposed on him a fine which (or any part or instalment of which) he has failed to pay and the court, but for this section, would also have imposed on him a period of imprisonment under subsection (1) of section 219 of this Act; and

(c) the court considers a supervised attendance order more appropriate than the serving of or, as the case may be, imposition of such a period of imprisonment.

(4) This subsection applies where—

(a) the court is a court prescribed for the purposes of this subsection by order made by the Secretary of State;

(b) the offender is of or over 18 years of age and is not serving a sentence of imprisonment;

(c) having been convicted of an offence, he has had imposed on him a fine which (or any part or instalment of which) he has failed to pay and the court, but for this section, would have imposed on him a period of imprisonment under section 219(1)(b) of this Act; and

(d) the fine, or as the case may be, the part or instalment, is of an amount not exceeding level 2 on the standard scale.

(5) An order under subsection (4)(a) above shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) The coming into force of a supervised attendance order shall have the effect of discharging the fine referred to in subsection (3)(b) or (4)(c) above or, as the case may be, section 236(3)(a) or 237(1) of this Act.

(7) Schedule 7 to this Act has effect for the purpose of making further and qualifying provision as to supervised attendance orders.

(8) In this section—

"imprisonment" includes detention;

"place of supervision" means such place as may be determined for the purposes of a supervised attendance order by the supervising officer; and

"supervising officer", in relation to a supervised attendance order, means a person appointed or assigned under Schedule 7 to this Act by the local authority whose area includes the locality in which the offender resides or will be residing when the order comes into force.

Modifications etc. (not altering text)
C86 S. 235(3)(b) extended (1.4.1996) by 1995 c. 40, ss. 4, 7(2), **Sch. 3 Pt. II para. 13(1)**

236 Supervised attendance orders in place of fines for 16 and 17 year olds.

(1) This section applies where a person of 16 or 17 years of age is convicted of an offence by a court of summary jurisdiction and the court considers that, but for this section, the appropriate sentence is a fine.

(2) Where this section applies, the court shall determine the amount of the fine and shall consider whether the person is likely to pay a fine of that amount within 28 days.

(3) If the court considers that the person is likely to pay the fine as mentioned in subsection (2) above, it shall—

(a) impose the fine; and

(b) subject to paragraph 1 of Schedule 7 to this Act, make a supervised attendance order in default of payment of the fine within 28 days.

(4) A supervised attendance order made under subsection (3)(b) above—

(a) shall come into force on such date, not earlier than 28 days after the making of the order, as may be specified in the order, unless the person pays the fine within that period;

(b) shall, for the purposes of the said Schedule 7, be deemed to be made on the date when it comes into force.

(5) Where, before the coming into force of a supervised attendance order made under subsection (3)(b) above, the person pays part of the fine, the period specified in the order shall be reduced by the proportion which the part of the fine paid bears to the whole fine, the resulting figure being rounded up or down to the nearest 10 hours; but this subsection shall not operate to reduce the period to less than 10 hours.

(6) If the court considers that the person is not likely to pay the fine as mentioned in subsection (2) above, it shall, subject to paragraph 1 of Schedule 7 to this Act, make a supervised attendance order in respect of that person.

(7) Sections 211(3), 213, 214(1) to (7), 215, 216(1) to (6), 217 to 219, 222 and 223 of this Act shall not apply in respect of a person to whom this section applies.

(8) For the purposes of any appeal or review, a supervised attendance order made under this section is a sentence.

(9) In this section "supervised attendance order" means an order made in accordance with section 235(2), (7) and (8) of this Act.

237 Supervised attendance orders where court allows further time to pay fine.

(1) Where a court, on an application to it under section 215(1) of this Act, allows a person further time for payment of a fine or instalments thereof it may, in addition, subject to paragraph 1 of Schedule 7 to this Act, impose a supervised attendance order in default of payment of the fine or any instalment of it on the due date.

(2) A supervised attendance order made under subsection (1) above shall—

(a) if the person fails to pay the fine or any instalment of it on the due date, come into force on the day after the due date; and

(b) for the purposes of the said Schedule 7, be deemed to be made on the date when it comes into force.

(3) Where, before the coming into force of a supervised attendance order under subsection (1) above, the person pays part of the fine, the period specified in the order shall be reduced by the proportion which the part of the fine paid bears to the whole fine, the resulting figure being rounded up or down to the nearest 10 hours; but this subsection shall not operate to reduce the period to less than 10 hours.

(4) In this section "supervised attendance order" means an order made in accordance with section 235(2), (7) and (8) of this Act.

Community service by offenders

238 Community service orders.

(1) Subject to the provisions of this Act, where a person of or over 16 years of age is convicted of an offence punishable by imprisonment, other than an offence the sentence for which is fixed by law, the court may, instead of imposing on him a

sentence of, or including, imprisonment or any other form of detention, make an order (in this Act referred to as "a community service order") requiring him to perform unpaid work for such number of hours (being in total not less than **[**F221 80 nor more than 300 on conviction on indictment, and not less than 80 nor more than 240 in any other case**]**) as may be specified in the order.

(2) A court shall not make a community service order in respect of any offender unless—

(a) the offender consents;

(b) the court has been notified by the Secretary of State that arrangements exist for persons who reside in the locality in which the offender resides, or will be residing when the order comes into force, to perform work under such an order;

(c) the court is satisfied, after considering a report by an officer of a local authority about the offender and his circumstances, and, if the court thinks it necessary, hearing that officer, that the offender is a suitable person to perform work under such an order; and

(d) the court is satisfied that provision can be made under the arrangements mentioned in paragraph (b) above for the offender to perform work under such an order.

(3) A copy of the report mentioned in subsection (2)(c) above shall be supplied to the offender or his solicitor.

(4) Before making a community service order the court shall explain to the offender in ordinary language—

(a) the purpose and effect of the order and in particular the obligations on the offender as specified in subsections (1) to (3) of section 239 of this Act;

(b) the consequences which may follow under subsections (4) to (6) of that section if he fails to comply with any of those requirements; and

(c) that the court has under section 240 of this Act the power to review the order on the application either of the offender or of an officer of the local authority in whose area the offender for the time being resides.

(5) The Secretary of State may by order direct that subsection (1) above shall be amended by substituting, for the maximum or minimum number of hours specified in that subsection as originally enacted or as subsequently amended under this subsection, such number of hours as may be specified in the order; and an order under this subsection may specify a different maximum or minimum number of hours for different classes of case.

(6) An order under subsection (5) above shall be made by statutory instrument, but no such order shall be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament; and any such order may be varied or revoked by a subsequent order under that subsection.

(7) Nothing in subsection (1) above shall be construed as preventing a court which makes a community service in respect of any offence from—

(a) imposing any disqualification on the offender;

(b) making an order for forfeiture in respect of the offence;

(c) ordering the offender to find caution for good behaviour.

(8) A community service order shall—

(a) specify the locality in which the offender resides or will be residing when the order comes into force;

(b) require the local authority in whose area the locality specified under paragraph (a) above is situated to appoint or assign an officer (referred to in this section and sections 239 to 245 of this Act as "the local authority officer") who will discharge the functions assigned to him by those sections; and

(c) state the number of hours of work which the offender is required to perform.

(9) Where, whether on the same occasion or on separate occasions, an offender is made subject to more than one community service order, or to both a community service order and a probation order which includes a requirement that that offender shall perform any unpaid work, the court may direct that the hours of work specified in any of those orders shall be concurrent with or additional to those specified in any other of those orders, but so that at no time shall the offender have an outstanding number of hours of work to perform in excess of the maximum provided for in subsection (1) above.

(10) Upon making a community service order the court shall—

(a) give, or send by registered post or the recorded delivery service, a copy of the order to the offender;

(b) send a copy of the order to the chief social work officer of the local authority in whose area the offender resides or will be residing when the order comes into force; and

(c) where it is not the appropriate court, send a copy of the order (together with such documents and information relating to the case as are considered useful) to the clerk of the appropriate court.

(11) Where a copy of a community service order has, under subsection (10)(a) above, been sent by registered post or by the recorded delivery service, an acknowledgement or certificate of delivery of a letter containing the copy order issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgement or certificate.

Textual Amendments

F221 Words in s. 238(1) substituted (18.7.1996) by S.I. 1996/1938, **art. 3**

239 Community service orders: requirements.

(1) An offender in respect of whom a community service order is in force shall—

(a) report to the local authority officer and notify him without delay of any change of address or in the times, if any, at which he usually works; and

(b) perform for the number of hours specified in the order such work at such times as the local authority officer may instruct.

(2) Subject to section 240(1) of this Act, the work required to be performed under a community service order shall be performed during the period of 12 months beginning with the date of the order; but, unless revoked, the order shall remain in force until the offender has worked under it for the number of hours specified in it.

(3) The instructions given by the local authority officer under this section shall, so far as practicable, be such as to avoid any conflict with the offender's religious beliefs and

any interference with the times, if any, at which he normally works or attends a school or other educational establishment.

(4) If at any time while a community service order is in force in respect of any offender it appears to the appropriate court, on information from the local authority officer, that that offender has failed to comply with any of the requirements of subsections (1) to (3) above (including any failure satisfactorily to perform the work which he has been instructed to do), that court may issue a warrant for the arrest of that offender, or may, if it thinks fit, instead of issuing a warrant in the first instance issue a citation requiring that offender to appear before that court at such time as may be specified in the citation.

(5) If it is proved to the satisfaction of the court before which an offender appears or is brought in pursuance of subsection (4) above that he has failed without reasonable excuse to comply with any of the requirements of the said subsections (1) to (3), that court may—

(a) without prejudice to the continuance in force of the order, impose on him a fine not exceeding level 3 on the standard scale;

(b) revoke the order and deal with that offender in any manner in which he could have been dealt with for the original offence by the court which made the order if the order had not been made; or

(c) subject to section 238(1) of this Act, vary the number of hours specified in the order.

(6) The evidence of one witness shall, for the purposes of subsection (5) above, be sufficient evidence.

240 Community service orders: amendment and revocation etc.

(1) Where a community service order is in force in respect of any offender and, on the application of that offender or of the local authority officer, it appears to the appropriate court that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made, that court may—

(a) extend, in relation to the order, the period of 12 months specified in section 239(2) of this Act;

(b) subject to section 238(1) of this Act, vary the number of hours specified in the order;

(c) revoke the order; or

(d) revoke the order and deal with the offender for the original offence in any manner in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

(2) If the appropriate court is satisfied that the offender proposes to change, or has changed, his residence from the locality for the time being specified under section 238(8)(a) of this Act to another locality and—

(a) that court has been notified by the Secretary of State that arrangements exist for persons who reside in that other locality to perform work under community service orders; and

(b) it appears to that court that provision can be made under those arrangements for him to perform work under the order,

that court may, and on the application of the local authority officer shall, amend the order by substituting that other locality for the locality for the time being specified in the order; and sections 238 to 245 of this Act shall apply to the order as amended.

(3) Where the court proposes to exercise its powers under subsection (1)(a), (b) or (d) above otherwise than on the application of the offender, it shall issue a citation requiring him to appear before the court and, if he fails to appear, may issue a warrant for his arrest.

241 Community service order: commission of offence while order in force.

(1) Where—

(a) a court has made a community service order in respect of an offender; and

(b) the offender is convicted of an offence committed in the circumstances mentioned in subsection (2) below,

the court which sentences him for that offence shall, in determining the appropriate sentence for that offence, have regard to the fact that the offence was committed in those circumstances.

(2) The circumstances referred to in subsection (1) above are that the offence was committed—

(a) during the period when the community service order was in force or within the period of three months following the expiry of that order; and

(b) in any place where unpaid work under the order was being or had previously been performed.

(3) The court shall not, under subsection (1) above, have regard to the fact that the offence was committed in the circumstances mentioned in subsection (2) above unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.

[F222(4) The fact that the offence mentioned in subsection (1)(b) above was committed in the circumstances mentioned in subsection (2) above shall, unless challenged—

(a) in the case of proceedings on indictment, by giving notice of a preliminary objection under paragraph (b) of section 72(1) of this Act or under that paragraph as applied by section 71(2) of this Act; or

(b) in summary proceedings, by preliminary objection before his plea is recorded,

be held as admitted.**]**

Textual Amendments

F222 S. 241(4) inserted (1.8.1997) by 1997 c. 48, **s. 26(2)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

242 Community service orders: persons residing in England and Wales.

(1) Where a court is considering the making of a community service order and it is satisfied that the offender has attained the age of 16 years and resides, or will be residing when the order comes into force, in England or Wales, then—

(a) section 238 of this Act shall have effect as if subsection (2) were amended as follows—

(i) paragraph (b) shall be omitted;

(ii) in paragraph (c) for the words "such an order" there shall be substituted the words " a community service order "; and

(iii) for paragraph (d) there shall be substituted the following paragraph—

"(d) it appears to that court that provision can be made for the offender to perform work under the order made under subsection (1) above under the arrangements which exist in the petty sessions area in which he resides or will be residing for persons to perform work under community service orders made under section 14 of the Powers of Criminal Courts Act 1973;"; and

(b) the order shall specify that the unpaid work required to be performed by the order shall be performed under the arrangements mentioned in section 238(2)(d) of this Act as substituted by paragraph (a) above.

(2) Where a community service order has been made and—

(a) the appropriate court is satisfied that the offender has attained the age of 16 years and proposes to reside or is residing in England or Wales; and

(b) it appears to that court that provision can be made for the offender to perform work under the order made under the arrangements which exist in the petty sessions area in which he proposes to reside or is residing for persons to perform work under community service orders made under section 14 of the [M87]Powers of Criminal Courts Act 1973,

it may amend the order by specifying that the unpaid work required to be performed by the order shall be performed under the arrangements mentioned in paragraph (b) of this subsection.

(3) A community service order made under section 238(1) as amended by or in accordance with this section shall—

(a) specify the petty sessions area in England or Wales in which the offender resides or will be residing when the order or the amendment comes into force; and

(b) require the probation committee for that area to appoint or assign a probation officer who will discharge in respect of the order the functions in respect of community service orders conferred on relevant officers by the Powers of Criminal Courts Act 1973.

Marginal Citations
M87 1973 c.62.

243 Community service orders: persons residing in Northern Ireland.

(1) Where a court is considering the making of a community service order and it is satisfied that the offender resides, or will be residing when the order comes into force, in Northern Ireland, then—

(a) section 238 of this Act shall have effect as if subsection (2) were amended as follows—

(i) paragraph (b) shall be omitted;

(ii) for paragraph (d) there shall be substituted the following paragraph—

"(d) it appears to the court that provision can be made by the Probation Board for Northern Ireland for him to perform work under such an order;";

(b) the order shall specify that the unpaid work required to be performed by the order shall be performed under the provision made by the Probation Board for Northern Ireland and referred to in section 238(2)(d) of this Act as substituted by paragraph (a) above.

(2) Where a community service order has been made and—

(a) the appropriate court is satisfied that the offender proposes to reside or is residing in Northern Ireland; and

(b) it appears to that court that provision can be made by the Probation Board for Northern Ireland for him to perform work under the order,

it may amend the order by specifying that the unpaid work required to be performed by the order shall be performed under the provision made by the Probation Board for Northern Ireland and referred to in paragraph (b) of this subsection.

(3) A community service order made under section 238(1) of this Act as amended by or in accordance with this section shall—

(a) specify the petty sessions district in Northern Ireland in which the offender resides or will be residing when the order or the amendment comes into force; and

(b) require the Probation Board for Northern Ireland to select an officer who will discharge in respect of the order the functions in respect of community service orders conferred on the relevant officer by the [M88]Treatment of Offenders (Northern Ireland) Order 1976.

Marginal Citations

M88 S.I. 1976 No.226 (N.I. 4)

244 Community service orders: general provisions relating to persons living in England and Wales or Northern Ireland.

(1) Where a community service order is made or amended in the circumstances specified in section 242 or 243 of this Act, the court which makes or amends the order shall send three copies of it as made or amended to the home court, together with such documents and information relating to the case as it considers likely to be of assistance to that court.

(2) In this section—

"home court" means—

(a) if the offender resides in England or Wales, or will be residing in England or Wales at the relevant time, the magistrates' court acting for the petty sessions area in which he resides or proposes to reside; and

(b) if he resides in Northern Ireland, or will be residing in Northern Ireland, at the relevant time, the court of summary jurisdiction acting for the petty sessions district in which he resides or proposes to reside; and

"the relevant time" means the time when the order or the amendment to it comes into force.

(3) A community service order made or amended in the circumstances specified in section 242 or 243 of this Act shall be treated, subject to the following provisions of this section, as if it were a community service order made in the part of the United

Kingdom in which the offender resides, or will be residing at the relevant time; and the legislation relating to community service orders which has effect in that part of the United Kingdom shall apply accordingly.

(4) Before making or amending a community service order in those circumstances the court shall explain to the offender in ordinary language—

(a) the requirements of the legislation relating to community service orders which has effect in the part of the United Kingdom in which he resides or will be residing at the relevant time;

(b) the powers of the home court under that legislation, as modified by this section; and

(c) its own powers under this section,

and an explanation given in accordance with this section shall be sufficient without the addition of an explanation under section 238(4) of this Act.

(5) The home court may exercise in relation to the community service order any power which it could exercise in relation to a community service order made by a court in the part of the United Kingdom in which the home court exercises jurisdiction, by virtue of the legislation relating to such orders which has effect in that part of the United Kingdom, except—

(a) a power to vary the order by substituting for the number of hours' work specified in it any greater number than the court which made the order could have specified;

(b) a power to revoke the order; and

(c) a power to revoke the order and deal with the offender for the offence in respect of which it was made in any manner in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

(6) If at any time while legislation relating to community service orders which has effect in one part of the United Kingdom applies by virtue of subsection (3) above to a community service order made in another part—

(a) it appears to the home court—

(i) if that court is in England or Wales, on information to a justice of the peace acting for the petty sessions area for the time being specified in the order; or

(ii) if it is in Northern Ireland, upon a complaint being made to a justice of the peace acting for the petty sessions district for the time being specified in the order,

that the offender has failed to comply with any of the requirements of the legislation applicable to the order; or

(b) it appears to the home court on the application of—

(i) the offender; or

(ii) if that court is in England and Wales, the relevant officer under the [M89]Powers of Criminal Courts Act 1973; or

(iii) if that court is in Northern Ireland, the relevant officer under the [M90]Treatment of Offenders (Northern Ireland) Order 1976,

that it would be in the interests of justice to exercise a power mentioned in subsection (5)(b) or (c) above,

the home court may require the offender to appear before the court by which the order was made.

(7) Where an offender is required by virtue of subsection (6) above to appear before the court which made a community service order, that court—

(a) may issue a warrant for his arrest; and

(b) may exercise any power which it could exercise in respect of the community service order if the offender resided in the part of the United Kingdom where the court has jurisdiction,

and any enactment relating to the exercise of such powers shall have effect accordingly.

Marginal Citations

M89 1973 c.62.

M90 S.I. 1976 No.226 (N.I. 4)

245 Community service orders: rules, annual report and interpretation.

(1) The Secretary of State may make rules for regulating the performance of work under community service orders or probation orders which include a requirement that the offender shall perform unpaid work.

(2) Without prejudice to the generality of subsection (1) above, rules under this section may—

(a) limit the number of hours' work to be done by a person under such an order on any one day;

(b) make provision as to the reckoning of time worked under such orders;

(c) make provision for the payment of travelling and other expenses in connection with the performance of work under such orders;

(d) provide for records to be kept of the work done by any person under such an order.

(3) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(4) The Secretary of State shall lay before Parliament each year, or incorporate in annual reports he already makes, a report of the working of community service orders.

(5) In sections 238 to 243 of this Act, "the appropriate court" means—

(a) where the relevant community service order has been made by the High Court, the High Court;

(b) in any other case, the court having jurisdiction in the locality for the time being specified in the order under section 238(8)(a) of this Act, being a sheriff or district court according to whether the order has been made by a sheriff or a district court, but in a case where the order has been made by a district court and there is no district court in that locality, the sheriff court.

[F223 Restriction of liberty orders]

Textual Amendments

F223 Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, **s. 5**; S.I. 1997/2323, arts. 3, 5(1), **Sch. 1**

[F224 245A Restriction of liberty orders.

(1) Without prejudice to section 245D of this Act, where a person of 16 years of age or more is convicted of an offence (other than an offence the sentence for which is fixed by law) the court, if it is of opinion that it is the most appropriate method of disposal, may make an order under this section (in this Act referred to as a "restriction of liberty order") in respect of him; and in this section and sections 245B to 245I of this Act any reference to an "offender" is a reference to a person in respect of whom an order has been made under this subsection.

(2) A restriction of liberty order may restrict the offender's movements to such extent as the court thinks fit and, without prejudice to the generality of the foregoing, may include provision—

(a) requiring the offender to be in such place as may be specified for such period or periods in each day or week as may be specified;

(b) requiring the offender not to be in such place or places, or such class or classes of place or places, at such time or during such periods, as may be specified,

but the court may not, under paragraph (a) above, require the offender to be in any place or places for a period or periods totalling more than 12 hours in any one day.

(3) A restriction of liberty order may be made for any period up to 12 months.

(4) Before making a restriction of liberty order, the court shall explain to the offender in ordinary language—

(a) the effect of the order, including any requirements which are to be included in the order under section 245C of this Act;

(b) the consequences which may follow any failure by the offender to comply with the requirements of any order; and

(c) that the court has power under section 245E of this Act to review the order on the application either of the offender or of any person responsible for monitoring the order,

and the court shall not make the order unless the offender agrees to comply with its requirements.

(5) The clerk of the court by which a restriction of liberty order is made shall—

(a) cause a copy of the order to be sent to any person who is to be responsible for monitoring the offender's compliance with the order; and

(b) cause a copy of the order to be given to the offender or sent to him by registered post or by the recorded delivery service; and an acknowledgment or certificate of delivery of a letter containing such copy order issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgment or certificate.

(6) Before making a restriction of liberty order which will require the offender to remain in a specified place or places the court shall obtain and consider information about

that place or those places, including information as to the attitude of persons likely to be affected by the enforced presence there of the offender.

(7) A restriction of liberty order shall be taken to be a sentence for the purposes of this Act and of any appeal.

(8) The Secretary of State may by regulations prescribe—

(a) which courts, or class or classes of courts, may make restriction of liberty orders;

(b) what method or methods of monitoring compliance with such orders may be specified in any such order by any such court; and

(c) the class or classes of offenders in respect of which restriction of liberty orders may be made,

and different provision may be made in relation to the matters mentioned in paragraphs (b) and (c) above in relation to different courts or classes of court.

(9) Without prejudice to the generality of subsection (8) above, in relation to district courts, regulations under that subsection may make provision as respects such courts by reference to whether the court is constituted by a stipendiary magistrate or by one or more justices.

(10) Regulations under subsection (8) above may make such transitional and consequential provisions, including provision in relation to the continuing effect of any restriction of liberty order in force when new regulations are made, as the Secretary of State considers appropriate.

(11) A court shall not make a restriction of liberty order which requires an offender to be in or, as the case may be, not to be in, a particular place or places unless it is satisfied that his compliance with that requirement can be monitored by the means of monitoring which it intends to specify in the order.

(12) The Secretary of State may by regulations substitute for the period of—

(a) hours for the time being mentioned in subsection (2) above; or

(b) months for the time being mentioned in subsection (3) above,

such period of hours or, as the case may be, months as may be prescribed in the regulations.

(13) Regulations under this section shall be made by statutory instrument.

(14) A statutory instrument containing regulations made under subsection (8) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(15) No regulations shall be made under subsection (12) above unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.**]**

Textual Amendments

F224 Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, **s. 5**; S.I. 1997/2323, arts. 3, 5(1), **Sch. 1**

[F225 245B Monitoring of restriction of liberty orders.

(1) Where the Secretary of State, in regulations made under section 245A(8) of this Act, empowers a court or a class of court to make restriction of liberty orders he shall notify the court or each of the courts concerned of the person or class or description of persons who may be designated by that court for the purpose of monitoring an offender's compliance with any such order.

(2) A court which makes a restriction of liberty order in respect of an offender shall include provision in the order for making a person notified by the Secretary of State under subsection (1) above, or a class or description of persons so notified, responsible for the monitoring of the offender's compliance with it.

(3) Where the Secretary of State changes the person or class or description of persons notified by him under subsection (1) above, any court which has made a restriction of liberty order shall, if necessary, vary the order accordingly and shall notify the variation to the offender.**]**

Textual Amendments

F225 Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, **s. 5**; S.I. 1997/2323, arts. 3, 5(1), **Sch. 1**

[F226 245C Remote monitoring.

(1) The Secretary of State may make such arrangements, including contractual arrangements, as he considers appropriate with such persons, whether legal or natural, as he thinks fit for the remote monitoring of the compliance of offenders with restriction of liberty orders, and different arrangements may be made in relation to different areas or different forms of remote monitoring.

(2) A court making a restriction of liberty order which is to be monitored remotely may include in the order a requirement that the offender shall, either continuously or for such periods as may be specified, wear or carry a device for the purpose of enabling the remote monitoring of his compliance with the order to be carried out.

(3) The Secretary of State shall by regulations specify devices which may be used for the purpose of remotely monitoring the compliance of an offender with the requirements of a restriction of liberty order.

(4) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Textual Amendments

F226 Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, **s. 5**; S.I. 1997/2323, arts. 3, 5(1), **Sch. 1**

Modifications etc. (not altering text)

C87 S. 245C applied (12.1.2004) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 40(7)**, 89; S.S.I. 2003/475, **art. 2**, Sch.

C88 S. 245C(1)(3) modified (prosp.) by Criminal Justice Act 2003 (c. 44), ss. 188, 336, **Sch. 11 para. 23**

S. 245C(1)(3) modified (4.4.2005) by Criminal Justice Act 2003 (c. 44), ss. 188, 336, **Sch. 13 para. 21**; S.I. 2005/950, **art. 2(1)**, Sch. 1

C89 S. 245C(1)(3) modified (prosp.) by Criminal Justice Act 2003 (c. 44), ss. 188, 336, **Sch. 11 para. 23**
S. 245C(1)(3) modified (4.4.2005) by Criminal Justice Act 2003 (c. 44), ss. 188, 336, **Sch. 13 para. 21**; S.I. 2005/950, **art. 2(1)**, Sch. 1

[F227 245D Concurrent probation and restriction of liberty orders.

(1) Notwithstanding sections 228(1) and 245A(1) of this Act, where the court—

(a) intends to make a restriction of liberty order under section 245A(1); and

(b) considers it expedient—

(i) having regard to the circumstances, including the nature of the offence and the character of the offender; and

(ii) having obtained a report as to the circumstances and character of the offender,

that the offender should also be subject to a probation order made under section 228(1) of this Act,

it may make both such orders in respect of the offender.

(2) Where the court makes both a restriction of liberty order and a probation order by virtue of subsection (1) above, the clerk of the court shall send a copy of each order to both—

(a) any person responsible for monitoring the offender's compliance with the restriction of liberty order; and

(b) the officer of the local authority who is to supervise the probationer.

(3) Where the offender by an act or omission fails to comply with a requirement of an order made by virtue of subsection (1) above—

(a) if the failure relates to a requirement contained in a probation order and is dealt with under section 232(2)(c) of this Act, the court may, in addition, exercise the power conferred by section 245F(2)(b) of this Act in relation to the restriction of liberty order; and

(b) if the failure relates to a requirement contained in a restriction of liberty order and is dealt with under section 245F(2)(b) of this Act, the court may, in addition, exercise the power conferred by section 232(2)(c) in relation to the probation order.

(4) Where the offender by an act or omission fails to comply with both a requirement contained in a probation order and a requirement contained in a restriction of liberty order to which he is subject by virtue of subsection (1) above, he may, without prejudice to subsection (3) above, be dealt with as respects that act or omission either under section 232(2) of this Act or under section 245F(2) of this Act but he shall not be liable to be otherwise dealt with in respect of that act or omission.**]**

Textual Amendments

F227 Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, **s. 5**; S.I. 1997/2323, arts. 3, 5(1), **Sch. 1**

[F228 245E Variation of restriction of liberty order.

(1) Where a restriction of liberty order is in force either the offender or any person responsible for monitoring his compliance with the order may apply to the court which made the order for a review of it.

(2) On an application made under subsection (1) above, and after hearing both the offender and any person responsible for monitoring his compliance with the order, the court may by order, if it appears to it to be in the interests of justice to do so—

(a) vary the order by—

(i) amending or deleting any of its requirements;

(ii) inserting further requirements; or

(iii) subject to subsection (3) of section 245A of this Act, increasing the period for which the order has to run; or

(b) revoke the order.

(3) Where the court, on the application of a person other than the offender, proposes to—

(a) exercise the power conferred by paragraph (a) of subsection (2) above to vary (otherwise than by deleting a requirement) a restriction of liberty order, it shall issue a citation requiring the offender to appear before the court and section 245A(4) shall apply to the variation of such an order as it applies to the making of an order; and

(b) exercise the power conferred by subsection (2)(b) above to revoke such an order and deal with the offender under section 245G of this Act, it shall issue a citation requiring him to appear before the court.

(4) If an offender fails to appear before the court after having been cited in accordance with subsection (3) above, the court may issue a warrant for his arrest.**]**

Textual Amendments

F228 Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, **s. 5**; S.I. 1997/2323, arts. 3, 5(1), **Sch. 1**

[F229 245F Breach of restriction of liberty order.

(1) If at any time when a restriction of liberty order is in force it appears to the court which made the order that the offender has failed to comply with any of the requirements of the order the court may issue a citation requiring the offender to appear before the court at such time as may be specified in the citation or, if it appears to the court to be appropriate, it may issue a warrant for the arrest of the offender.

(2) If it is proved to the satisfaction of the court that the offender has failed without reasonable excuse to comply with any of the requirements of the order the court may by order—

(a) without prejudice to the continuance in force of the order, impose a fine not exceeding level 3 on the standard scale;

(b) vary the restriction of liberty order; or

(c) revoke that order.

(3) A fine imposed under this section in respect of a failure to comply with the requirements of a restriction of liberty 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 or a penalty imposed on a person summarily convicted.

(4) Where the court varies a restriction of liberty order under subsection (2) above it may do so in any of the ways mentioned in paragraph (a) of section 245E(2) of this Act.**]**

Textual Amendments

F229 Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, **s. 5**; S.I. 1997/2323, arts. 3, 5(1), **Sch. 1**

[F230 245C Disposal on revocation of restriction of liberty order.

(1) Where the court revokes a restriction of liberty order under section 245E(2)(b) or 245F(2) of this Act, it may dispose of the offender in any way which would have been competent at the time when the order was made, but in so doing the court shall have regard to the time for which the order has been in operation.

(2) Where the court revokes a restriction of liberty order as mentioned in subsection (1) above, and the offender is, by virtue of section 245D(1) of this Act, subject to a probation order, it shall, before disposing of the offender under subsection (1) above, discharge the probation order.**]**

Textual Amendments

F230 Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, **s. 5**; S.I. 1997/2323, arts. 3, 5(1), **Sch. 1**

[F231 245H Documentary evidence in proceedings under section 245F.

(1) Evidence of the presence or absence of the offender at a particular place at a particular time may, subject to the provisions of this section, be given by the production of a document or documents bearing to be—

(a) a statement automatically produced by a device specified in regulations made under section 245C of this Act, by which the offender's whereabouts were remotely monitored; and

(b) a certificate signed by a person nominated for the purpose of this paragraph by the Secretary of State that the statement relates to the whereabouts of the person subject to the order at the dates and times shown in the statement.

(2) The statement and certificate mentioned in subsection (1) above shall, when produced at a hearing, be sufficient evidence of the facts set out in them.

(3) Neither the statement nor the certificate mentioned in subsection (1) above shall be admissible in evidence unless a copy of both has been served on the offender prior to the hearing and, without prejudice to the foregoing, where it appears to the court that the offender has had insufficient notice of the statement or certificate, it may adjourn a hearing or make any order which it thinks appropriate in the circumstances.**]**

Textual Amendments

F231 Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, **s. 5**; S.I. 1997/2323, arts. 3, 5(1), **Sch. 1**

Modifications etc. (not altering text)

C90 S. 245H applied (4.4.2005) by Criminal Justice Act 2003 (c. 44), ss. 194, 336, **Sch. 13 para. 14(5)**; S.I. 2005/950, **art. 2(1)**, Sch. 1

[F232 245I Procedure on variation or revocation of restriction of liberty order.

Where a court exercises any power conferred by sections 232(3A), 245E(2) or 245F(2)(b) or (c) of this Act, the clerk of the court shall forthwith give copies of the order varying or revoking the restriction of liberty order to any person responsible for monitoring the offender's compliance with that order and that person shall give a copy of the order to the offender.**]**

Textual Amendments

F232 Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, **s. 5**; S.I. 1997/2323, arts. 3, 5(1), **Sch. 1**

VALID FROM 27/06/2003

[F233 245J Breach of certain orders: adjourning hearing and remanding in custody etc.

(1) Where a probationer or offender appears before the court in respect of his apparent failure to comply with a requirement of, as the case may be, a probation order, drug treatment and testing order, supervised attendance order, community service order or restriction of liberty order the court may, for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with him, adjourn the hearing.

(2) Where, under subsection (1) above, the court adjourns a hearing it shall remand the probationer or offender in custody or on bail or ordain him to appear at the adjourned hearing.

(3) A court shall not so adjourn a hearing for any single period exceeding four weeks or, on cause shown, eight weeks.

(4) A probationer or offender remanded under this section may appeal against the refusal of bail, or against the conditions imposed, within 24 hours of his remand.

(5) Any such appeal shall be by note of appeal presented to the High Court, who, either in court or in chambers, may after hearing the prosecutor and the appellant—

(a) review the order appealed against and either grant bail on such conditions as it thinks fit or ordain the appellant to appear at the adjourned hearing; or

(b) confirm the order.**]**

Textual Amendments

F233 S. 245J inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 48**, 89; S.S.I. 2003/288, **art. 2**, Sch.

VALID FROM 28/10/2004

[F234 Community reparation orders

Textual Amendments

F234 Ss. 245K-245Q and preceding cross-heading inserted (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 120**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1

245K Community reparation orders

(1) Where subsection (2) below applies, the court may, instead of imposing any sentence which, but for this subsection, it could impose, make a community reparation order in respect of a person ("the offender").

(2) This subsection applies where—

(a) the offender is convicted in summary proceedings of an offence;

(b) at the time when he committed the offence, he was at least 12 years old;

(c) he committed the offence by engaging to any extent in antisocial behaviour; and

(d) in relation to the local authority that would be specified in the order, the Scottish Ministers have notified the court that the authority has made arrangements that would enable an order to be complied with.

(3) For the purposes of subsection (2)(c) above, a person engages in antisocial behaviour if he—

(a) acts in a manner that causes or is likely to cause alarm or distress; or

(b) pursues a course of conduct that causes or is likely to cause alarm or distress,

to at least one person who is not of the same household as him.

(4) A community reparation order is an order—

(a) requiring the specified local authority to appoint a supervising officer for the purposes of—

(i) determining which prescribed activities the offender should undertake for the specified number of hours (being at least 10 and not exceeding 100) during the period of 12 months beginning with the day on which the order is made;

(ii) determining at what times and in which localities he should undertake those activities; and

(iii) giving the offender directions during that period to undertake activities in accordance with determinations under sub-paragraphs (i) and (ii) above; and

(b) requiring the offender, during that period, to comply with those directions.

(5) In subsection (4) above—

"prescribed activities" means activities designed—

(a) to enable reparation to be made (whether to a particular person or to a group of persons and whether such a person, or any person in the group, has been affected by the antisocial behaviour or otherwise) by persons who have engaged in antisocial behaviour; or

(b) to reduce the likelihood of persons engaging in such behaviour,

which are of such description as the Scottish Ministers may by regulations prescribe; and

"specified" means specified in the order.

(6) The Scottish Ministers may by regulations make provision about determinations made, and directions given, by virtue of paragraph (a) of subsection (4) above.

(7) In giving directions by virtue of subsection (4)(a)(iii) above, a supervising officer shall, as far as practicable, avoid—

(a) any conflict with the offender's religious beliefs;

(b) any interference with the times at which the offender normally works (or carries out voluntary work) or attends an educational establishment.

(8) Before making a community reparation order in respect of an offender, the court shall explain to him in ordinary language—

(a) the purpose and effect of the order;

(b) the consequences of failure to comply with the order; and

(c) the powers the court has under section 245P of this Act.

(9) For the purposes of any appeal or review, a community reparation order is a sentence.

(10) Regulations under subsections (5) and (6) above shall be made by statutory instrument; and any such instrument shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

245L Community reparation order: notification

Where the court makes a community reparation order it shall intimate the making of the order to—

(a) the offender;

(b) the chief social work officer of the local authority specified in the order; and

(c) where it is not the appropriate court, the clerk of the appropriate court.

245M Failure to comply with community reparation order: extension of 12 month period

Subject to sections 245N(4) and 245P(2)(c) and (d) of this Act, if—

(a) a community reparation order is made in respect of an offender; and

(b) the offender fails to comply with a direction given by the supervising officer appointed by virtue of the order,

then the order shall, notwithstanding section 245K(4)(a)(i), remain in force until the offender has complied with the direction.

245N Failure to comply with community reparation order: powers of court

(1) Subsection (2) below applies where—

(a) a community reparation order is made in respect of an offender; and

(b) on information from the offender's supervising officer, it appears to the appropriate court that the offender has failed to comply with the order or any direction given under it.

(2) The court may issue—

(a) a warrant for the arrest of the offender; or

(b) a citation requiring the offender to appear before the court at such time as may be specified in the citation.

(3) The unified citation provisions shall apply in relation to a citation under this section as they apply in relation to a citation under section 216(3)(a) of this Act.

(4) If it is proved to the satisfaction of the court before which the offender is brought or appears in pursuance of subsection (2) above that the offender has failed without reasonable excuse to comply with the order or any direction given under it, the court may revoke the order and deal with the offender in any manner in which he could have been dealt with for the original offence if the order had not been made.

(5) The evidence of one witness shall, for the purposes of subsection (4) above, be sufficient evidence.

245P Extension, variation and revocation of order

(1) Subsection (2) below applies where a community reparation order is made in respect of an offender.

(2) On the application of the offender or the offender's supervising officer, the appropriate court may, if it appears to it that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made—

(a) extend, in relation to the order, the period of 12 months specified in section 245K(4)(a)(i) of this Act;

(b) vary the numbers of hours specified in the order;

(c) revoke the order; or

(d) revoke the order and deal with the offender in any manner in which he could have been dealt with for the original offence if the order had not been made.

(3) If the court proposes to exercise its powers under subsection (2)(a), (b) or (d) above otherwise than on the application of the offender, it shall issue a citation requiring the offender to appear before the court at such time as may be specified in the citation and, if he fails to appear, may issue a warrant for his arrest.

(4) The unified citation provisions shall apply in relation to a citation under this section as they apply in relation to a citation under section 216(3)(a) of this Act.

245Q Sections 245L, 245N and 245P: meaning of "appropriate court"

In sections 245L, 245N and 245P of this Act, "appropriate court", in relation to a community reparation order, means the court having jurisdiction in the area of the local authority specified in the order, being a sheriff or district court according to whether the order is made by a sheriff or district court (except that, in the case

where an order is made by a district court and there is no district court in that area, it means the sheriff).**]**

Admonition and absolute discharge

246 Admonition and absolute discharge.

(1) **[**[F235]Subject to sections 205A and 205B of this Act, **]**a court may, if it appears to meet the justice of the case, dismiss with an admonition any person convicted by the court of any offence.

(2) Where a person is convicted on indictment of an offence (other than an offence the sentence for which is fixed by law), if it appears to the court, 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 it may instead of sentencing him make an order discharging him absolutely.

(3) 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 the 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.

Textual Amendments

F235 Words in s. 246(1) inserted (20.10.1997 for specified purposes and otherwise prosp.) by 1997 c. 48, ss. 62(1), 65(2), **Sch. 1 para. 21(31)**; S.I. 1997/2323, art. 3, **Sch. 1**

Modifications etc. (not altering text)

C91 S. 246(1)(2) restricted (1.4.1996) by 1995 c. 40, ss. 4, 7(2), **Sch. 3 Pt. II para. 9**

247 Effect of probation and absolute discharge.

(1) Subject to the following provisions of this section, a conviction of an offence for which an order is made 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.

(2) Without prejudice to subsection (1) above, 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) Subsections (1) and (2) above shall not affect any right to appeal.

(4) Where a person charged with an offence has at any time previously been discharged absolutely in respect of the commission by him of an offence it shall be competent, in the proceedings for that offence, to lay before the court the order of absolute discharge in like manner as if the order were a conviction.

(5) Where an offender is 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.

(6) 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 mentioned in subsection (1) above, is subsequently sentenced under this Act for that offence, the provisions of that subsection shall cease to apply to the conviction.

Modifications etc. (not altering text)

C92 S. 247(1) excluded (1.5.2004) by Sexual Offences Act 2003 (c. 42), **ss. 134(1)(c)**, 141 (with s. 134(2)(3)); S.S.I. 2004/138, **art. 2**

C93 S. 247(1)(2) excluded (6.4.2010) by Coroners and Justice Act 2009 (c. 25), **ss. 158(3)(c)**, 182 (with s. 180); S.I. 2010/816, **art. 2**, Sch. para. 11

C94 S. 247(1) excluded (prosp.) by 2005 asp 16, s. 96(2A) (as added by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 24(4)**, 206(1))

C95 S. 247(1)(2) excluded (prosp.) by 2005 asp 16, s. 129(5) (as added by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 24(5)**, 206(1))

C96 S. 247(1)(2) excluded (prosp.) by 2005 asp 16, s. 129(5) (as added by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 24(5)**, 206(1))

C97 S. 247(1)(2) excluded (6.4.2010) by Coroners and Justice Act 2009 (c. 25), **ss. 158(3)(c)**, 182 (with s. 180); S.I. 2010/816, **art. 2**, Sch. para. 11

Disqualification

248 Disqualification where vehicle used to commit offence.

(1) Where a person is convicted of an offence (other than one triable only summarily) and the court which passes sentence is satisfied that a motor vehicle was used for the purposes of committing or facilitating the commission of that offence, the court may order him to be disqualified for such a period as the court thinks fit from holding or obtaining a licence to drive a motor vehicle granted under Part III of the [M91]Road Traffic Act 1988.

[[F236](2) A court which makes an order under subsection (1) above disqualifying a person from holding or obtaining a licence under Part III of the Road Traffic Act 1988 shall require him to produce—

(a) any such licence;

(b) any Community licence (within the meaning of that Part); and

(c) any counterpart of a licence mentioned in paragraph (a) or (b) above,

held by him.**]**

(3) Any reference in this section to facilitating the commission of an offence shall include a reference to the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.

(4) In relation to licences **[**[F237], other than Community licences**]** which came into force before 1st June 1990, the reference in subsection (2) above to the counterpart of a licence shall be disregarded.

Textual Amendments

F236 S. 248(2) substituted (1.1.1997) by S.I. 1996/1974, reg. 5, **Sch. 4 para. 6(2)**

F237 Words in s. 248(4) inserted (1.1.1997) by 1996/1974, reg. 5, Sch. 4 para. 6(3)

Marginal Citations

M91 1988 c.52.

[F238 248A General power to disqualify offenders.

(1) Subject to subsection (2) below, the court by or before which a person is convicted of an offence may, in addition to or instead of dealing with him in any other way, order him to be disqualified from holding or obtaining a licence to drive a motor vehicle granted under Part III of the M92 Road Traffic Act 1988 for such period as it thinks fit.

(2) Where the person is convicted of an offence for which the sentence is fixed by law, subsection (1) above shall have effect as if the words "or instead of" were omitted.

(3) Subsections (2) and (4) of section 248 of this Act shall apply for the purposes of this section as they apply for the purposes of that section.]

Textual Amendments

F238 Ss. 248A-248C inserted (20.10.1997 for specified purposes and otherwise 1.1.1998) by 1997 c. 48, **s. 15(1)**; S.I. 1997/2323, arts. 3, 4, Schs. 1, **2**

Marginal Citations

M92 1988 c.52.

[F239 248B Power to disqualify fine defaulters.

(1) This section applies where the court has power to impose a period of imprisonment in default of payment of a fine, or any part or instalment of a fine.

(2) Where this section applies, the court may, instead of imposing such a period of imprisonment as is mentioned in subsection (1) above, order that where the offender is in default he shall be disqualified from holding a licence to drive a motor vehicle granted under Part III of the Road Traffic Act 1988 for such period not exceeding twelve months as the court thinks fit.

(3) Where an order has been made under subsection (2) above in default of payment of any fine, or any part or instalment of a fine—

(a) on payment of the fine to any person authorised to receive it, the order shall cease to have effect; and

(b) on payment of any part of that fine to any such person, the period of disqualification to which the order relates shall be reduced (or, as the case may be, further reduced) by a number of days bearing as nearly as possible the same proportion to such period as the sum so paid bears to the amount of the fine outstanding at the commencement of that period.

(4) Subsections (2) and (4) of section 248 of this Act shall apply for the purposes of this section as they apply for the purposes of that section.

(5) Section 19 of the [M93]Road Traffic Offenders Act 1988 (proof of disqualification in Scottish proceedings) shall apply to an order under subsection (2) above as it applies to a conviction or extract conviction.

(6) The Secretary of State may by order made by statutory instrument vary the period specified in subsection (2) above; but no such order shall be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.**]**

Textual Amendments

F239 Ss. 248A-248C inserted (20.10.1997 for specified purposes and otherwise 1.1.1998) by 1997 c. 48, **s. 15(1)**; S.I. 1997/2323, arts. 3, 4, Schs. 1, **2**

Marginal Citations

M93 1988 c.53.

[F240248CApplication of sections 248A and 248B.

(1) The Secretary of State may by order prescribe which courts, or class or classes of courts, may make orders under section 248A or 248B of this Act and, without prejudice to that generality, in relation to district courts an order under this subsection may make provision as respects such courts by reference to whether the court is constituted by a stipendiary magistrate or by one or more justices.

(2) An order made under subsection (1) above shall be made by statutory instrument and any such instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Where an order has been made under subsection (1) above, section 248(1) of this Act shall not apply as respects any court, or class or classes of court prescribed by the order.**]**

Textual Amendments

F240 Ss. 248A-248C inserted (20.10.1997 for specified purposes and otherwise 1.1.1998) by 1997 c. 48, **s. 15(1)**; S.I. 1997/2323, arts. 3, 4, Schs. 1, **2**

Compensation

249 Compensation order against convicted person.

(1) Subject to subsections (2) and (4) below, where a person is convicted of an offence the court, instead of or in addition to dealing with him in any other way, may make an order (in this Part of this Act referred to as "a compensation order") requiring him to pay compensation for any personal injury, loss or damage caused, whether directly or indirectly, by the acts which constituted the offence.

(2) It shall not be competent for a court to make a compensation order—

(a) where, under section 246(2) of this Act, it makes an order discharging him absolutely;

(b) where, under section 228 of this Act, it makes a probation order; or

(c) at the same time as, under section 202 of this Act, it defers sentence.

(3) Where, in the case of an offence involving dishonest appropriation, or the unlawful taking and using of property or a contravention of section 178(1) of the [M94]Road Traffic Act 1988 (taking motor vehicle without authority etc.) the property is recovered, but has been damaged while out of the owner's possession, that damage, however and by whomsoever it was in fact caused, shall be treated for the purposes of subsection (1) above as having been caused by the acts which constituted the offence.

(4) No compensation order shall be made in respect of—

(a) loss suffered in consequence of the death of any person; or

(b) injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road, except such damage as is treated, by virtue of subsection (3) above, as having been caused by the convicted person's acts.

(5) In determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such order, the court shall take into consideration his means so far as known to the court.

(6) For the purposes of subsection (5) above, in assessing the means of a person who is serving, or is to serve, a period of imprisonment or detention, no account shall be taken of earnings contingent upon his obtaining employment after release.

(7) In solemn proceedings there shall be no limit on the amount which may be awarded under a compensation order.

(8) In summary proceedings—

(a) a sheriff, or a stipendiary magistrate appointed under section 5 of the [M95]District Courts (Scotland) Act 1975, shall have power to make a compensation order awarding in respect of each offence an amount not exceeding the prescribed sum;

(b) a judge of a district court (other than such stipendiary magistrate) shall have power to make a compensation order awarding in respect of each offence an amount not exceeding level 4 on the standard scale.

(9) Payment of any amount under a compensation order shall be made to the clerk of the court who shall account for the amount to the person entitled thereto.

(10) Only the court shall have power to enforce a compensation order.

Marginal Citations

M94 1988 c.52.

M95 1975 c.20.

250 Compensation orders: supplementary provisions.

(1) Where a court considers that in respect of an offence it would be appropriate to impose a fine and to make a compensation order but the convicted person has insufficient means to pay both an appropriate fine and an appropriate amount in compensation the court should prefer a compensation order.

(2) Where a convicted person has both been fined and had a compensation order made against him in respect of the same offence or different offences in the same

proceedings, a payment by the convicted person shall first be applied in satisfaction of the compensation order.

(3) For the purposes of any appeal or review, a compensation order is a sentence.

(4) Where a compensation order has been made against a person, a payment made to the court in respect of the order shall be retained until the determination of any appeal in relation to the order.

251 Review of compensation order.

(1) Without prejudice to the power contained in section 213 of this Act, (as applied by section 252 of this Act), at any time before a compensation order has been complied with or fully complied with, the court, on the application of the person against whom the compensation order was made, may discharge the compensation order or reduce the amount that remains to be paid if it appears to the court that—

(a) the injury, loss or damage in respect of which the compensation order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the compensation order; or

(b) that property the loss of which is reflected in the compensation order has been recovered.

(2) In subsection (1) above "the court" means—

(a) in a case where, as respects the compensation order, a transfer of fine order under section 222 of this Act (as applied by the said section 252) is effective and the court by which the compensation order is enforceable is in terms of the transfer of fine order a court of summary jurisdiction in Scotland, that court; or

(b) in any other case, the court which made the compensation order or, where that court was the High Court, by which the order was first enforceable.

252 Enforcement of compensation orders: application of provisions relating to fines.

(1) The provisions of this Act specified in subsection (2) below shall, subject to any necessary modifications and to the qualifications mentioned in that subsection, apply in relation to compensation orders as they apply in relation to fines; and section 91 of the [M96]Magistrates' Courts Act 1980 and article 96 of the [M97]Magistrates' Courts (Northern Ireland) Order 1981 shall be construed accordingly.

(2) The provisions mentioned in subsection (1) above are—

section 211(3), (4) and (7) to (9) (enforcement of fines);

section 212 (fines in summary proceedings);

section 213 (power to remit fines), with the omission of the words "or (4)" in subsection (2) of that section;

section 214 (time for payment) with the omission of—

(a) the words from "unless" to "its decision" in subsection (4); and

(b) subsection (5);

section 215 (further time for payment);

section 216 (reasons for default);

section 217 (supervision pending payment of fine);

section 218 (supplementary provisions), except that subsection (1) of that section shall not apply in relation to compensation orders made in solemn proceedings;

subject to subsection (3) below, section 219(1)(b), (2), (3), (5), (6) and (8) (maximum period of imprisonment for non-payment of fine);
section 220 (payment of fine in part by prisoner);
section 221 (recovery by civil diligence);
section 222 (transfer of fine orders);
section 223 (action of clerk of court on transfer of fine order); and
section 224 (discharge from imprisonment to be specified).

(3) In the application of the provisions of section 219 of this Act mentioned in subsection (2) above for the purposes of subsection (1) above—

(a) a court may impose imprisonment in respect of a fine and decline to impose imprisonment in respect of a compensation order but not vice versa; and

(b) where a court imposes imprisonment both in respect of a fine and of a compensation order the amounts in respect of which imprisonment is imposed shall, for the purposes of subsection (2) of the said section 219, be aggregated.

Extent Information

E3 S. 252 extends to UK for certain construction purposes, see. s. 252(1).

Marginal Citations

M96 1980 c.43.

M97 1981/1675 (N.I. 26.)

253 Effect of compensation order on subsequent award of damages in civil proceedings.

(1) This section shall have effect where a compensation order or a service compensation order or award has been made in favour of any person in respect of any injury, loss or damage and a claim by him in civil proceedings for damages in respect thereof subsequently falls to be determined.

(2) The damages in the civil proceedings shall be assessed without regard to the order or award; but where the whole or part of the amount awarded by the order or award has been paid, the damages awarded in the civil proceedings shall be restricted to the amount (if any) by which, as so assessed, they exceed the amount paid under the order or award.

(3) Where the whole or part of the amount awarded by the order or award remains unpaid and damages are awarded in a judgment in the civil proceedings, then, unless the person against whom the order or award was made has ceased to be liable to pay the amount unpaid (whether in consequence of an appeal, or of his imprisonment for default or otherwise), the court shall direct that the judgment—

(a) if it is for an amount not exceeding the amount unpaid under the order or award, shall not be enforced; or

(b) if it is for an amount exceeding the amount unpaid under the order or award, shall not be enforced except to the extent that it exceeds the amount unpaid,

without the leave of the court.

(4) In this section a "service compensation order or award" means—

(a) an order requiring the payment of compensation under paragraph 11 of—

(i) Schedule 5A to the [M98]Army Act 1955;
(ii) Schedule 5A to the [M99]Air Force Act 1955; or
(iii) Schedule 4A to the [M100]Naval Discipline Act 1957; or

(b) an award of stoppages payable by way of compensation under any of those Acts.

Marginal Citations
M98 1955 c.18.
M99 1955 c.19.
M100 1957 c.53.

Forfeiture

254 Search warrant for forfeited articles.

Where a court has made an order for the forfeiture of an article, the court or any justice 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.

PART XII

EVIDENCE

Special capacity

255 Special capacity.

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—

(a) in the case of proceedings on indictment, by giving notice of a preliminary objection under paragraph (b) of section 72(1) of this Act or under that paragraph as applied by section 71(2) of this Act; or

(b) in summary proceedings, by preliminary objection before his plea is recorded,

be held as admitted.

[F241 Proof of age]

Textual Amendments

F241 S. 255A and preceding cross-heading inserted (1.8.1997) by 1997 c. 48, **s. 27**; S.I. 1997/1712, art. 3, **Sch. 1** (subject to arts. 4, 5)

[F242 255A Proof of age.

Where the age of any person is specified in an indictment or a complaint, it shall, unless challenged—

(a) in the case of proceedings on indictment by giving notice of a preliminary objection under paragraph (b) of section 72(1) of this Act or under that paragraph as applied by section 71(2) of this Act; or

(b) in summary proceedings—

(i) by preliminary objection before the plea of the accused is recorded; or

(ii) by objection at such later time as the court may in special circumstances allow,

be held as admitted.**]**

Textual Amendments

F242 S. 255A and preceding cross-heading inserted (1.8.1997) by 1997 c. 48, **s. 27**; S.I. 1997/1712, art. 3, **Sch. 1** (subject to arts. 4, 5)

Agreed evidence

256 Agreements and admissions as to evidence.

(1) In any trial it shall not be necessary for the accused or for the prosecutor—

(a) to prove any fact which is admitted by the other; or

(b) to prove any document, the terms and application of which are not in dispute between them,

and, without prejudice to paragraph 1 of Schedule 8 to this Act, copies of any documents may, by agreement of the parties, be accepted as equivalent to the originals.

(2) For the purposes of subsection (1) above, any admission or agreement shall be made by lodging with the clerk of court a minute in that behalf signed—

(a) in the case of an admission, by the party making the admission or, if that party is the accused and he is legally represented, by his counsel or solicitor; and

(b) in the case of an agreement, by the prosecutor and the accused or, if he is legally represented, his counsel or solicitor.

(3) Where a minute has been signed and lodged as aforesaid, any facts and documents admitted or agreed thereby shall be deemed to have been duly proved.

257 Duty to seek agreement of evidence.

(1) Subject to subsection (2) below, the prosecutor and the accused (or each of the accused if more than one) shall each identify any facts which are facts—

(a) which he would, apart from this section, be seeking to prove;

(b) which he considers unlikely to be disputed by the other party (or by any of the other parties); and

(c) in proof of which he does not wish to lead oral evidence,

and shall, without prejudice to section 258 of this Act, take all reasonable steps to secure the agreement of the other party (or each of the other parties) to them; and the other party (or each of the other parties) shall take all reasonable steps to reach such agreement.

(2) Subsection (1) above shall not apply in relation to proceedings as respects which the accused (or any of the accused if more than one) is not legally represented.

(3) The duty under subsection (1) above applies—

(a) in relation to proceedings on indictment, from the date of service of the indictment until the swearing of the jury or, where intimation is given under section 76 of this Act, the date of that intimation; and

(b) in relation to summary proceedings, from the date on which the accused pleads not guilty until the swearing of the first witness or, where the accused tenders a plea of guilty at any time before the first witness is sworn, the date when he does so.

258 Uncontroversial evidence.

(1) This section applies where, in any criminal proceedings, a party (in this section referred to as "the first party") considers that facts which that party would otherwise be seeking to prove are unlikely to be disputed by the other parties to the proceedings.

(2) Where this section applies, the first party may prepare and sign a statement—

(a) specifying the facts concerned; or

(b) referring to such facts as set out in a document annexed to the statement,

and shall, not less than 14 days before the trial diet, serve a copy of the statement and any such document on every other party.

(3) Unless any other party serves on the first party, not more than seven days after the date of service of the copy on him under subsection (2) above or by such later time as the court may in special circumstances allow, a notice that he challenges any fact specified or referred to in the statement, the facts so specified or referred to shall be deemed to have been conclusively proved.

(4) Where a notice is served under subsection (3) above, the facts specified or referred to in the statement shall be deemed to have been conclusively proved only in so far as unchallenged in the notice.

(5) Subsections (3) and (4) above shall not preclude a party from leading evidence of circumstances relevant to, or other evidence in explanation of, any fact specified or referred to in the statement.

(6) Notwithstanding subsections (3) and (4) above, the court—

(a) may, on the application of any party, where it is satisfied that there are special circumstances; and

(b) shall, on the joint application of all the parties,

direct that the presumptions in those subsections shall not apply in relation to such fact specified or referred to in the statement as is specified in the direction.

(7) An application under subsection (6) above may be made at any time after the commencement of the trial and before the commencement of the prosecutor's address to the court on the evidence.

(8) Where the court makes a direction under subsection (6) above it shall, unless all the parties otherwise agree, adjourn the trial and may, without prejudice to section 268 of this Act, permit any party to lead evidence as to any such fact as is specified in the direction, notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given.

(9) A copy of a statement or a notice required, under this section, to be served on any party shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served such copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

Hearsay

259 Exceptions to the rule that hearsay evidence is inadmissible.

(1) Subject to the following provisions of this section, evidence of a statement made by a person otherwise than while giving oral evidence in court in criminal proceedings shall be admissible in those proceedings as evidence of any matter contained in the statement where the judge is satisfied—

(a) that the person who made the statement will not give evidence in the proceedings of such matter for any of the reasons mentioned in subsection (2) below;

(b) that evidence of the matter would be admissible in the proceedings if that person gave direct oral evidence of it;

(c) that the person who made the statement would have been, at the time the statement was made, a competent witness in such proceedings; and

(d) that there is evidence which would entitle a jury properly directed, or in summary proceedings would entitle the judge, to find that the statement was made and that either—

(i) it is contained in a document; or

(ii) a person who gave oral evidence in the proceedings as to the statement has direct personal knowledge of the making of the statement.

(2) The reasons referred to in paragraph (a) of subsection (1) above are that the person who made the statement—

(a) is dead or is, by reason of his bodily or mental condition, unfit or unable to give evidence in any competent manner;

(b) is named and otherwise sufficiently identified, but is outwith the United Kingdom and it is not reasonably practicable to secure his attendance at the trial or to obtain his evidence in any other competent manner;

(c) is named and otherwise sufficiently identified, but cannot be found and all reasonable steps which, in the circumstances, could have been taken to find him have been so taken;

(d) having been authorised to do so by virtue of a ruling of the court in the proceedings that he is entitled to refuse to give evidence in connection with the subject matter of the statement on the grounds that such evidence might incriminate him, refuses to give such evidence; or

(e) is called as a witness and either—

(i) refuses to take the oath or affirmation; or

(ii) having been sworn as a witness and directed by the judge to give evidence in connection with the subject matter of the statement refuses to do so,

and in the application of this paragraph to a child, the reference to a witness refusing to take the oath or affirmation or, as the case may be, to having been sworn shall be construed as a reference to a child who has refused to accept an admonition to tell the truth or, having been so admonished, refuses to give evidence as mentioned above.

(3) Evidence of a statement shall not be admissible by virtue of subsection (1) above where the judge is satisfied that the occurrence of any of the circumstances mentioned in paragraphs (a) to (e) of subsection (2) above, by virtue of which the statement would otherwise be admissible, is caused by—

(a) the person in support of whose case the evidence would be given; or

(b) any other person acting on his behalf,

for the purpose of securing that the person who made the statement does not give evidence for the purposes of the proceedings either at all or in connection with the subject matter of the statement.

(4) Where in any proceedings evidence of a statement made by any person is admitted by reference to any of the reasons mentioned in paragraphs (a) to (c) and (e)(i) of subsection (2) above—

(a) any evidence which, if that person had given evidence in connection with the subject matter of the statement, would have been admissible as relevant to his credibility as a witness shall be admissible for that purpose in those proceedings;

(b) evidence may be given of any matter which, if that person had given evidence in connection with the subject matter of the statement, could have been put to him in cross-examination as relevant to his credibility as a witness but of which evidence could not have been adduced by the cross-examining party; and

(c) evidence tending to prove that that person, whether before or after making the statement, made in whatever manner some other statement which is inconsistent with it shall be admissible for the purpose of showing that he has contradicted himself.

(5) Subject to subsection (6) below, where a party intends to apply to have evidence of a statement admitted by virtue of subsection (1) above he shall, before the trial diet, give notice in writing of—

(a) that fact;

(b) the witnesses and productions to be adduced in connection with such evidence; and

(c) such other matters as may be prescribed by Act of Adjournal,

to every other party to the proceedings and, for the purposes of this subsection, such evidence may be led notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given.

(6) A party shall not be required to give notice as mentioned in subsection (5) above where—

(a) the grounds for seeking to have evidence of a statement admitted are as mentioned in paragraph (d) or (e) of subsection (2) above; or

(b) he satisfies the judge that there was good reason for not giving such notice.

(7) If no other party to the proceedings objects to the admission of evidence of a statement by virtue of subsection (1) above, the evidence shall be admitted without the judge requiring to be satisfied as mentioned in that subsection.

(8) For the purposes of the determination of any matter upon which the judge is required to be satisfied under subsection (1) above—

(a) except to the extent that any other party to the proceedings challenges them and insists in such challenge, it shall be presumed that the circumstances are as stated by the party seeking to introduce evidence of the statement; and

(b) where such a challenge is insisted in, the judge shall determine the matter on the balance of probabilities, and he may draw any reasonable inference—

(i) from the circumstances in which the statement was made or otherwise came into being; or

(ii) from any other circumstances, including, where the statement is contained in a document, the form and contents of the document.

(9) Where evidence of a statement has been admitted by virtue of subsection (1) above on the application of one party to the proceedings, without prejudice to anything in any enactment or rule of law, the judge may permit any party to lead additional evidence of such description as the judge may specify, notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given.

(10) Any reference in subsections (5), (6) and (9) above to evidence shall include a reference to evidence led in connection with any determination required to be made for the purposes of subsection (1) above.

Modifications etc. (not altering text)
C98 Ss. 259-261 excluded (1.4.1996) by 1995 c. 40, ss. 3, 7(2), **Sch. 3 Pt. II para. 14**

260 Admissibility of prior statements of witnesses.

(1) Subject to the following provisions of this section, where a witness gives evidence in criminal proceedings, any prior statement made by the witness shall be admissible as evidence of any matter stated in it of which direct oral evidence by him would be admissible if given in the course of those proceedings.

(2) A prior statement shall not be admissible under this section unless—

(a) the statement is contained in a document;

(b) the witness, in the course of giving evidence, indicates that the statement was made by him and that he adopts it as his evidence; and

(c) at the time the statement was made, the person who made it would have been a competent witness in the proceedings.

(3) For the purposes of this section, any reference to a prior statement is a reference to a prior statement which, but for the provisions of this section, would not be admissible as evidence of any matter stated in it.

(4) Subsections (2) and (3) above do not apply to a prior statement—

(a) contained in a precognition on oath; or

(b) made in other proceedings, whether criminal or civil and whether taking place in the United Kingdom or elsewhere,

and, for the purposes of this section, any such statement shall not be admissible unless it is sufficiently authenticated.

Modifications etc. (not altering text)

C99 Ss. 259-261 excluded (1.4.1996) by 1995 c. 40, ss. 3, 7(2), **Sch. 3 Pt. II para. 14**

261 Statements by accused.

(1) Subject to the following provisions of this section, nothing in sections 259 and 260 of this Act shall apply to a statement made by the accused.

(2) Evidence of a statement made by an accused shall be admissible by virtue of the said section 259 at the instance of another accused in the same proceedings as evidence in relation to that other accused.

(3) For the purposes of subsection (2) above, the first mentioned accused shall be deemed—

(a) where he does not give evidence in the proceedings, to be a witness refusing to give evidence in connection with the subject matter of the statement as mentioned in paragraph (e) of subsection (2) of the said section 259; and

(b) to have been, at the time the statement was made, a competent witness in the proceedings.

(4) Evidence of a statement shall not be admissible as mentioned in subsection (2) above unless the accused at whose instance it is sought to be admitted has given notice of his intention to do so as mentioned in subsection (5) of the said section 259; but subsection (6) of that section shall not apply in the case of notice required to be given by virtue of this subsection.

Modifications etc. (not altering text)

C100 Ss. 259-261 excluded (1.4.1996) by 1995 c. 40, ss. 3, 7(2), **Sch. 3 Pt. II para. 14**

262 Construction of sections 259 to 261.

(1) For the purposes of sections 259 to 261 of this Act, a "statement" includes—

(a) any representation, however made or expressed, of fact or opinion; and

(b) any part of a statement,

but does not include a statement in a precognition other than a precognition on oath.

(2) For the purposes of the said sections 259 to 261 a statement is contained in a document where the person who makes it—

(a) makes the statement in the document personally;

(b) makes a statement which is, with or without his knowledge, embodied in a document by whatever means or by any person who has direct personal knowledge of the making of the statement; or

(c) approves a document as embodying the statement.

(3) In the said sections 259 to 261—

"criminal proceedings" include any hearing by the sheriff of an application made under Chapter 3 of Part II of the Children (Scotland) Act 1995 for a finding as to whether grounds for the referral of a child's case to a children's hearing are established, in so far as the application relates to the commission of an offence by the child, or for a review of such a finding;

"document" includes, in addition to a document in writing—

(a) any map, plan, graph or drawing;

(b) any photograph;

(c) any disc, tape, sound track 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

(d) any film, 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;

"film" includes a microfilm;

"made" includes allegedly made.

(4) Nothing in the said sections 259 to 261 shall prejudice the admissibility of a statement made by a person other than in the course of giving oral evidence in court which is admissible otherwise than by virtue of those sections.

Witnesses

263 Examination of witnesses.

(1) In any trial, it shall be competent for the party against whom a witness is produced and sworn *in causa* to examine such witness both in cross and *in causa*.

(2) The judge may, on the motion of either party, on cause shown order that the examination of a witness for that party ("the first witness") shall be interrupted to permit the examination of another witness for that party.

(3) Where the judge makes an order under subsection (2) above he shall, after the examination of the other witness, permit the recall of the first witness.

(4) In a trial, a 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 the trial; and evidence may be led in the trial to prove that the witness made the different statement on the occasion specified.

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

264 Spouse of accused a competent witness.

(1) The spouse of an accused may be called as a witness—

(a) by the accused;

(b) by a co-accused or by the prosecutor without the consent of the accused.

(2) Nothing in this section shall—

(a) make the spouse of an accused a compellable witness for a co-accused or for the prosecutor in a case where such spouse would not be so compellable at common law;

(b) compel a spouse to disclose any communication made between the spouses during the marriage.

(3) The failure of the spouse of an accused to give evidence shall not be commented on by the defence or the prosecutor.

(4) The spouse of a person charged with bigamy may be called as a witness either for the prosecution or the defence and without the consent of the person charged.

265 Witnesses not excluded for conviction, interest, relationship, etc.

(1) Every person adduced as a witness who is not otherwise by law disqualified from giving evidence, shall be admissible as a witness, and no objection to the admissibility of a witness shall be competent on the ground of—

(a) conviction of or punishment for an offence;

(b) interest;

(c) agency or partial counsel;

(d) the absence of due citation to attend; or

(e) his having been precognosced subsequently to the date of citation.

(2) Where any person who is or has been an agent of the accused is adduced and examined as a witness for the accused, it shall not be competent for 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.

(3) No objection to the admissibility of a witness shall be competent on the ground 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 the witness in any trial.

(4) It shall not be competent for any witness to decline to be examined and give evidence on the ground of any relationship mentioned in subsection (3) above.

266 Accused as witness.

(1) Subject to subsections (2) to (8) below, the accused shall be a competent witness for the defence at every stage of the case, whether the accused is on trial alone or along with a co-accused.

(2) The accused shall not be called as a witness in pursuance of this section except upon his own application or in accordance with subsection (9) or (10) below.

(3) An 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.

(4) An 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—

(a) 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

(b) the accused or his counsel or solicitor has asked questions of the witnesses for the prosecution with a view to establishing the accused's good character or impugning the character of the complainer, 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 the prosecutor or of the witnesses for the prosecution or of the complainer; or

(c) the accused has given evidence against any other person charged in the same proceedings.

(5) In a case to which paragraph (b) of subsection (4) above applies, the prosecutor shall be entitled to ask the accused a question of a kind specified in that subsection only if the court, on the application of the prosecutor, permits him to do so.

(6) An application under subsection (5) above in proceedings on indictment shall be made in the course of the trial but in the absence of the jury.

(7) In subsection (4) above, references to the complainer include references to a victim who is deceased.

(8) Every person called as a witness in pursuance of this section 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.

(9) The accused may—

(a) with the consent of a co-accused, call that other accused as a witness on the accused's behalf; or

(b) ask a co-accused any question in cross-examination if that co-accused gives evidence,

but he may not do both in relation to the same co-accused.

(10) The prosecutor or the accused may call as a witness a co-accused who has pleaded guilty to or been acquitted of all charges against him which remain before the court (whether or not, in a case where the co-accused has pleaded guilty to any charge, he has been sentenced) or in respect of whom the diet has been deserted; and the party calling such co-accused as a witness shall not require to give notice thereof, but the court may grant any other party such adjournment or postponement of the trial as may seem just.

(11) Where, in any trial, the accused is to be called as a witness he shall be so called as the first witness for the defence unless the court, on cause shown, otherwise directs.

267 Witnesses in court during trial.

(1) The court may, on an application by any party to the proceedings, permit a witness to be in court during the proceedings or any part of the proceedings before he has given evidence if it appears to the court that the presence of the witness would not be contrary to the interests of justice.

(2) Without prejudice to subsection (1) above, where a witness has, without the permission of the court and without the consent of the parties to the proceedings, been present in court during the proceedings, 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.

VALID FROM 04/10/2004

[F243 267A Citation of witnesses for precognition

(1) This Act shall be sufficient warrant for the citation of witnesses for precognition by the prosecutor, whether or not any person has been charged with the offence in relation to which the precognition is taken.

(2) Such citation shall be in the form prescribed by Act of Adjournal or as nearly as may be in such form.

(3) A witness who, having been duly cited—

(a) fails without reasonable excuse, after receiving at least 48 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 the precognition is taken,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to a term of imprisonment not exceeding 21 days.**]**

Textual Amendments

F243 S. 267A inserted (4.10.2004) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 22**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to savings in arts. 3-5)

VALID FROM 10/12/2007

I[F244] Identification procedures

Textual Amendments

F244 S. 267B and preceding cross-heading inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 34**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

267B Order requiring accused to participate in identification procedure

(1) The court may, on an application by the prosecutor in any proceedings, make an order requiring the accused person to participate in an identification parade or other identification procedure.

(2) The application may be made at any time after the proceedings have been commenced.

(3) The court—

(a) shall (if the accused is present) allow the accused to make representations in relation to the application;

(b) may, if it considers it appropriate to do so (where the accused is not present), fix a hearing for the purpose of allowing the accused to make such representations.

(4) Where an order is made under subsection (1) above, the clerk of court shall (if the accused is not present) have notice of the order effected as respects the accused without delay.

(5) Notice under subsection (4) above shall (in relation to any proceedings) be effected in the same manner as citation under section 141 of this Act.

(6) It is sufficient evidence that notice has been effected under subsection (5) above if there is produced a written execution—

(a) in the form prescribed by Act of Adjournal or as nearly as may be in such form; and

(b) signed by the person who effected notice.

(7) In relation to notice effected by means of registered post or the recorded delivery service, the relevant post office receipt requires to be produced along with the execution mentioned in subsection (6) above.

(8) A person who, having been given due notice of an order made under subsection (1) above, without reasonable excuse fails to comply with the order is—

(a) guilty of an offence; and

(b) liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 12 months or to both.

(9) For the purpose of subsection (5) above, section 141 of this Act is to be read with such modifications as are necessary for its application in the circumstances.

(10) In this section, "the court" means—

(a) in the case of proceedings in the High Court, a single judge of that Court;

(b) in any other case, any court with jurisdiction in relation to the proceedings.**]**

Additional evidence, etc.

268 Additional evidence.

(1) Subject to subsection (2) below, the judge may, on a motion of the prosecutor or the accused made—

(a) in proceedings on indictment, at any time before the commencement of the speeches to the jury;

(b) in summary proceedings, at any time before the prosecutor proceeds to address the judge on the evidence,

permit him to lead additional evidence.

(2) Permission shall only be granted under subsection (1) above where the judge—

(a) considers that the additional evidence is *prima facie* material; and

(b) accepts that at the commencement of the trial either—

(i) the additional evidence was not available and could not reasonably have been made available; or

(ii) the materiality of such additional evidence could not reasonably have been foreseen by the party.

(3) The judge may permit the additional evidence to be led notwithstanding that—

(a) in proceedings on indictment, a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given; or

(b) in any case, a witness must be recalled.

(4) The judge may, when granting a motion in terms of this section, adjourn or postpone the trial before permitting the additional evidence to be led.

(5) In this section "the commencement of the trial" means—

(a) in proceedings on indictment, the time when the jury is sworn; and

(b) in summary proceedings, the time when the first witness for the prosecution is sworn.

269 Evidence in replication.

(1) The judge may, on a motion of the prosecutor made at the relevant time, permit the prosecutor to lead additional evidence for the purpose of—

(a) contradicting evidence given by any defence witness which could not reasonably have been anticipated by the prosecutor; or

(b) providing such proof as is mentioned in section 263(4) of this Act.

(2) The judge may permit the additional evidence to be led notwithstanding that—

(a) in proceedings on indictment, a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given; or

(b) in any case, a witness must be recalled.

(3) The judge may when granting a motion in terms of this section, adjourn or postpone the trial before permitting the additional evidence to be led.

(4) In subsection (1) above, "the relevant time" means—

(a) in proceedings on indictment, after the close of the defence evidence and before the commencement of the speeches to the jury; and

(b) in summary proceedings, after the close of the defence evidence and before the prosecutor proceeds to address the judge on the evidence.

270 Evidence of criminal record and character of accused.

(1) This section applies where—

(a) evidence is led by the defence, or the defence asks questions of a witness for the prosecution, with a view to establishing the accused's good character or impugning the character of the prosecutor, of any witness for the prosecution or of the complainer; or

(b) the nature or conduct of the defence is such as to tend to establish the accused's good character or to involve imputations on the character of the prosecutor, of any witness for the prosecution or of the complainer.

(2) Where this section applies the court may, without prejudice to section 268 of this Act, on the application of the prosecutor, permit the prosecutor to lead evidence that the accused has committed, or has been convicted of, or has been charged with, offences other than that for which he is being tried, or is of bad character, notwithstanding that, in proceedings on indictment, a witness or production concerned is not included in any list lodged by the prosecutor and that the notice required by sections 67(5) and 78(4) of this Act has not been given.

(3) In proceedings on indictment, an application under subsection (2) above shall be made in the course of the trial but in the absence of the jury.

(4) In subsection (1) above, references to the complainer include references to a victim who is deceased.

Evidence of children

[F245271 Evidence of vulnerable persons: special provisions.

(1) Subject to subsections (7) and (8) below, where a vulnerable person has been or could be cited to give evidence in a trial the court may appoint a commissioner to take the evidence of that person 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;

(c) in exceptional circumstances in either solemn or summary proceedings, during the course of the trial,

application is made in that regard; but to be so appointed a person must be, and for a period of 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.

(4) Subsections (2) to (6), (8) and (9) of section 272 of this Act shall apply to an application under subsection (1) above and evidence taken by a commissioner appointed under that subsection as those subsections apply to an application under subsection (1) of that section and evidence taken by a commissioner appointed on such an application.

(5) Subject to subsections (7) and (8) below, where a vulnerable person has been or is likely to be cited to give evidence in a trial, the court may, on an application being made to it, authorise the giving of evidence by that person by means of a live television link.

(6) Subject to subsections (7) and (8) below, where a vulnerable person has been or is likely to be 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 that person while that person 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 vulnerable person.

(7) The court may grant an application under subsection (1), (5) or (6) above only on cause shown having regard in particular to—

(a) the possible effect on the vulnerable person if required to give evidence, no such application having been granted;

(b) whether it is likely that the vulnerable person would be better able to give evidence if such an application were granted; and

(c) the views of the vulnerable person.

(8) In considering whether to grant an application under subsection (1), (5) or (6) above the court may take into account, where appropriate, any of the following—

(a) the nature of the alleged offence;

(b) the nature of the evidence which the vulnerable person is likely to be called upon to give;

(c) the relationship, if any, between the person and the accused; and

(d) where the person is a child, his age and maturity.

(9) Where a sheriff to whom an application has been made under subsection (1), (5) or (6) above would have granted the application but for the lack of accommodation or equipment necessary to achieve the purpose of the application, he may by order transfer the case to any sheriff court which has such accommodation and equipment available, being a sheriff court in the same sheriffdom.

(10) The sheriff court to which a case has been transferred under subsection (9) above shall be deemed to have granted an application under, as the case may be, subsection (1), (5) or (6) above in relation to the case.

(11) Where a court has or is deemed to have granted an application under subsection (1), (5) or (6) above in relation to a vulnerable person, and the vulnerable person gives evidence that he recalls having identified, prior to the trial, a person alleged to have committed an offence, the evidence of a third party as to the identification of that person by the vulnerable person prior to the trial shall be admissible as evidence as to such identification.

(12) In this section—

"child" means a person under the age of 16 years;

"court" means the High Court or the sheriff court;

"trial" means a trial under solemn or under summary procedure; and

"vulnerable person" means—

(a) any child; and

(b) any person of or over the age of 16 years—

(i) who is subject to an order made in consequence of a finding of a court in any part of the United Kingdom that he is suffering from mental disorder within the meaning of section 1(2) of the [M101]Mental Health (Scotland) Act 1984, section 1(2) of the [M102]Mental Health Act 1983, or Article 3(1) of the [M103]Mental Health (Northern Ireland) Order 1986 (application of enactment); or

(ii) who is subject to a transfer direction under section 71(1) of the 1984 Act, section 47 of the 1983 Act, or Article 53 of the 1986 Order (transfer directions); or

(iii) who otherwise appears to the court to suffer from significant impairment of intelligence and social functioning.**]**

Textual Amendments

F245 S. 271 substituted (1.8.1997) by 1997 c. 48, **s. 29**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

Marginal Citations

M101 1984 c.36.
M102 1983 c.20.
M103 S.I. 1986/595 (N.I.4).

VALID FROM 01/04/2005

[F246271A Child witnesses

(1) Where a child witness is to give evidence at or for the purposes of a trial, the child witness is entitled, subject to—

(a) subsections (2) to (13) below, and

(b) section 271D of this Act,

to the benefit of one or more of the special measures for the purpose of giving evidence.

(2) A party citing or intending to cite a child witness shall, **[**F247by the required time**]** , lodge with the court a notice (referred to in this Act as a "child witness notice")—

(a) specifying the special measure or measures which the party considers to be the most appropriate for the purpose of taking the child witness's evidence, or

(b) if the party considers that the child witness should give evidence without the benefit of any special measure, stating that fact.

(3) A child witness notice shall contain or be accompanied by—

(a) a summary of any views expressed for the purposes of section 271E(2)(b) of this Act, and

(b) such other information as may be prescribed by Act of Adjournal.

(4) The court may, on cause shown, allow a child witness notice to be lodged after **[**F248the required time**]** .

(5) The court shall, not later than 7 days after a child witness notice has been lodged, consider the notice in the absence of the parties and, subject to section 271B(3) of this Act—

(a) in the case of a notice under subsection (2)(a) above—

(i) if a standard special measure is specified in the notice, make an order authorising the use of that measure for the purpose of taking the child witness's evidence, and

(ii) if any other special measure is specified in the notice and the court is satisfied on the basis of the notice that it is appropriate to do so, make an order authorising the use of the special measure (in addition to any authorised by virtue of an order under sub-paragraph (i) above) for the purpose of taking the child witness's evidence,

(b) in the case of a notice under subsection (2)(b) above, if—

(i) the summary of views accompanying the notice under subsection (3)(a) above indicates that the child witness has expressed a wish to give evidence without the benefit of any special measure, and

(ii) the court is satisfied on the basis of the notice that it is appropriate to do so,

make an order authorising the giving of evidence by the child witness without the benefit of any special measure, or

(c) if—

(i) paragraph (a)(ii) or (b) above would apply but for the fact that the court is not satisfied as mentioned in that paragraph, or

(ii) in the case of a notice under subsection (2)(b), the summary of views accompanying the notice under subsection (3)(a) above indicates that the child witness has not expressed a wish to give evidence without the benefit of any special measure,

make an order **[**F249under subsection (5A) below.**]**

[That order is an order—

F250(5A) (a) in the case of proceedings in the High Court where the preliminary hearing is yet to be held, appointing the child witness notice to be disposed of at that hearing;

(b) in the case of proceedings on indictment in the sheriff court where the first diet is yet to be held, appointing the child witness notice to be disposed of at that diet; or

(c) in any other case, appointing a diet to be held before the trial diet and requiring the parties to attend the diet.**]**

(6) Subsection (7) below applies where—

(a) it appears to the court that a party intends to call a child witness to give evidence at or for the purposes of the trial,

(b) the party has not lodged a child witness notice in respect of the child witness by the time specified in subsection (2) above, and

(c) the court has not allowed a child witness notice in respect of the child witness to be lodged after that time under subsection (4) above.

(7) Where this subsection applies, the court shall—

(a) order the party to lodge a child witness notice in respect of the child witness by such time as the court may specify, or

[F251(b) where the court does not so order—

(i) in the case of proceedings on indictment where this subsection applies at or before the preliminary hearing or, as the case may be, the first diet, at that hearing or diet make an order under subsection (9) below; or

(ii) in any other case, make an order appointing a diet to be held before the trial diet and requiring the parties to attend the diet.**]**

(8) On making an order under subsection **[**F252(5A)(c) or (7)(b)(ii)**]** above, the court may postpone the trial diet.

[Subsection (9) below applies to—

F253(8A) (a) a preliminary hearing or first diet, so far as the court is—

(i) by virtue of an order under subsection (5A)(a) or (b) above, disposing of a child witness notice at the hearing or diet; or

(ii) by virtue of subsection (7)(b)(i) above, to make an order under subsection (9) above at the hearing or diet; and

(b) a diet appointed under subsection (5A)(c) or (7)(b)(ii) above.**]**

(9) At a **[**F254hearing or diet to which this subsection applies**]** , the court, after giving the parties an opportunity to be heard—

(a) in a case where any of the standard special measures has been authorised by an order under subsection (5)(a)(i) above, may make an order authorising the use of such further special measure or measures as it considers appropriate for the purpose of taking the child witness's evidence, and

(b) in any other case, shall make an order—

(i) authorising the use of such special measure or measures as the court considers to be the most appropriate for the purpose of taking the child witness's evidence, or

(ii) that the child witness is to give evidence without the benefit of any special measure.

(10) The court may make an order under subsection (9)(b)(ii) above only if satisfied—

(a) where the child witness has expressed a wish to give evidence without the benefit of any special measure, that it is appropriate for the child witness so to give evidence, or

(b) in any other case, that—

(i) the use of any special measure for the purpose of taking the evidence of the child witness would give rise to a significant risk of prejudice to the fairness of the trial or otherwise to the interests of justice, and

(ii) that risk significantly outweighs any risk of prejudice to the interests of the child witness if the order is made.

(11) A **[**F255hearing or diet to which subsection (9) above applies**]** may—

(a) on the application of the party citing or intending to cite the child witness in respect of whom the diet is to be held, or

(b) of the court's own motion,

be held in chambers.

(12) A diet **[**[F256]appointed under subsection (5A)(c) or (7)(b)(ii) above in any case may be conjoined with any other diet to be held before the trial diet in the case.**]**

(13) A party lodging a child witness notice shall, at the same time, intimate the notice to the other parties to the proceedings.

[F257](13A) **[** In subsections (2) and (4) above, "the required time" means—

(a) in the case of proceedings in the High Court, no later than 14 clear days before the preliminary hearing;

(b) in the case of proceedings on indictment in the sheriff court, no later than 7 clear days before the first diet;

(c) in any other case, no later than 14 clear days before the trial diet.**]**

(14) In this section, references to a standard special measure are to any of the following special measures—

(a) the use of a live television link in accordance with section 271J of this Act where the place from which the child witness is to give evidence by means of the link is another part of the court building in which the court-room is located,

(b) the use of a screen in accordance with section 271K of this Act, and

(c) the use of a supporter in accordance with section 271L of this Act in conjunction with either of the special measures referred to in paragraphs (a) and (b) above.**]**

Textual Amendments

F246 Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006. 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 1**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

F247 Words in s. 271A(2) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 43(a)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, art. 2, Sch. (with savings in art. 4); S.S.I. 2006/59, art. 2, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

F248 Words in s. 271A(4) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 43(b)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, art. 2, Sch. (with savings in art. 4); S.S.I. 2006/59, art. 2, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

F249 Words in s. 271A(5) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 43(c)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, art. 2, Sch. (with savings in art. 4); S.S.I. 2006/59, art. 2, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

F250 S. 271A(5A) inserted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 43(d)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with

savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)) S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

F251 S. 271A(7)(b) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 43(e)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, art. 2, Sch. (with savings in art. 4); S.S.I. 2006/59, art. 2, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

F252 Words in s. 271A(8) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 43(f)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, art. 2, Sch. (with savings in art. 4); S.S.I. 2006/59, art. 2, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

F253 S. 271A(8A) inserted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 43(g)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, art. 2, Sch. (with savings in art. 4); S.S.I. 2006/59, art. 2, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

F254 Words in s. 271A(9) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 43(h)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, art. 2, Sch. (with savings in art. 4); S.S.I. 2006/59, art. 2, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

F255 Words in s. 271A(11) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 43(i)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, art. 2, Sch. (with savings in art. 4); S.S.I. 2006/59, art. 2, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

F256 Words in s. 271A(12) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 43(j)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, art. 2, Sch. (with savings in art. 4); S.S.I. 2006/59, art. 2, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

F257 S. 271A(13A) inserted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 43(k)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, art. 2, Sch. (with savings in art. 4); S.S.I. 2006/59, art. 2, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

Modifications etc. (not altering text)

C101 Ss. 271-271M applied by Criminal Justice (Scotland) Act 2003 (asp 7), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 3**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, **art. 2** (with art. 3)

VALID FROM 01/04/2005

[F258 271B Further special provision for child witnesses under the age of 12

(1) This section applies where a child witness—

(a) is to give evidence at, or for the purposes of, a trial in respect of any offence specified in subsection (2) below, and

(b) is under the age of 12 on the date of commencement of the proceedings in which the trial is being or to be held.

(2) The offences referred to in subsection (1)(a) above are—

(a) murder,

(b) culpable homicide,

(c) any offence to which section 288C of this Act applies,

(d) any offence which involves an assault on, or injury or a threat of injury to, any person (including any offence involving neglect or ill-treatment of, or other cruelty to, a child),

(e) abduction, and

(f) plagium.

(3) Where this section applies, the court shall not make an order under section 271A or 271D of this Act which has the effect of requiring the child witness to be present in the court-room or any part of the court building in which the court-room is located for the purpose of giving evidence unless satisfied—

(a) where the child witness has expressed a wish to be so present for the purposes of giving evidence, that it is appropriate for the child witness to be so present for that purpose, or

(b) in any other case, that—

(i) the taking of the evidence of the child witness without the child witness being so present would give rise to a significant risk of prejudice to the fairness of the trial or otherwise to the interests of justice, and

(ii) that risk significantly outweighs any risk of prejudice to the interests of the child witness if the order is made.**]**

Textual Amendments

F258 Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006. 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 1**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

Modifications etc. (not altering text)

C102 Ss. 271-271M applied by Criminal Justice (Scotland) Act 2003 (asp 7), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 3**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, { art. 2} (with art. 3)

VALID FROM 01/04/2006

[F259 271C Vulnerable witnesses other than child witnesses

(1) This section applies where a party citing or intending to cite a person (other than a child witness) to give evidence at, or for the purposes of, a trial (such a person being referred to in this section as "the witness") considers—

(a) that the witness is likely to be a vulnerable witness, and

(b) that a special measure or combination of special measures ought to be used for the purpose of taking the witness's evidence.

(2) Where this section applies, the party citing or intending to cite the witness shall, **[**F260 by the required time**]** , make an application (referred to as a "vulnerable witness application") to the court for an order authorising the use of one or more of the special measures for the purpose of taking the witness's evidence.

(3) A vulnerable witness application shall—

(a) specify the special measure or measures which the party making the application considers to be the most appropriate for the purpose of taking the evidence of the witness to whom the application relates, and

(b) contain or be accompanied by—

(i) a summary of any views expressed for the purposes of section 271E(2)(b) of this Act, and

(ii) such other information as may be prescribed by Act of Adjournal.

(4) The court may, on cause shown, allow a vulnerable witness application to be made after the **[**F261 the required time**]** .

(5) The court shall, not later than 7 days after a vulnerable witness application is made to it, consider the application in the absence of the parties and—

(a) make an order authorising the use of the special measure or measures specified in the application if satisfied on the basis of the application that—

(i) the witness in respect of whom the application is made is a vulnerable witness,

(ii) the special measures or measures specified in the application are the most appropriate for the purpose of taking the witness's evidence, and

(iii) it is appropriate to do so after having complied with the duty in subsection (8) below, or

(b) if not satisfied as mentioned in paragraph (a) above, **[**F262 make an order under subsection (5A) below.**]**

F263 **[** (5A) That order is an order—

(a) in the case of proceedings in the High Court where the preliminary hearing is yet to be held, appointing the vulnerable witness application to be disposed of at that hearing,

(b) in the case of proceedings on indictment in the sheriff court where the first diet is yet to be held, appointing the vulnerable witness application to be disposed of at that diet, or

(c) in any other case, appointing a diet to be held before the trial diet and requiring the parties to attend the diet.**]**

(6) On making an order under subsection **[**F264(5A)(c)**]** above, the court may postpone the trial diet.

F265(6A) **[** Subsection (7) below applies to—

(a) a preliminary hearing or first diet so far as the court is, by virtue of an order under subsection (5A)(a) or (b) above disposing of a vulnerable witness application at the hearing or diet, and

(b) a diet appointed under subsection (5A)(c) above.**]**

(7) At a **[**F266hearing or diet to which this subsection applies**]** , the court may—

(a) after giving the parties an opportunity to be heard, and

(b) if satisfied that the witness in respect of whom the application is made is a vulnerable witness,

make an order authorising the use of such special measure or measures as the court considers to be the most appropriate for the purpose of taking the witness's evidence.

(8) In deciding whether to make an order under subsection (5)(a) or (7) above, the court shall—

(a) have regard to—

(i) the possible effect on the witness if required to give evidence without the benefit of any special measure, and

(ii) whether it is likely that the witness would be better able to give evidence with the benefit of a special measure, and

(b) take into account the matters specified in subsection (2)(a) to (f) of section 271 of this Act.

(9) A **[**F267hearing or diet to which subsection (7) above applies**]** may—

(a) on the application of the party citing or intending to cite the witness in respect of whom the diet is to be held, or

(b) of the court's own motion,

be held in chambers.

(10) A diet **[**F268appointed under subsection (5A)(c) above in any case may be conjoined with any other diet to be held before the trial diet in the case.**]**

(11) A party making a vulnerable witness application shall, at the same time, intimate the application to the other parties to the proceedings.

F269(12) **[** In subsections (2) and (4) above, "the required time" means—

(a) in the case of proceedings in the High Court, no later than 14 clear days before the preliminary hearing,

(b) in the case of proceedings on indictment in the sheriff court, no later than 7 clear days before the first diet,

(c) in any other case, no later than 14 clear days before the trial diet.**]]**

Textual Amendments

F259 Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006. 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 1**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**,

Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

F260 Words in s. 271C(2) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(a)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

F261 Words in s. 271C(4) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(b)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

F262 Words in s. 271C(5)(b) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(c)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

F263 S. 271C(5A) inserted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(d)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

F264 Words in s. 271C(6) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(e)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

F265 S. 271C(6A) inserted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(f)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

F266 Words in s. 271C(7) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(g)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

F267 Words in s. 271C(9) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(h)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

F268 Words in s. 271C(10) substituted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(i)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

F269 S. 271C(12) inserted (1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 44(j)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

Modifications etc. (not altering text)

C103 Ss. 271-271M applied by Criminal Justice (Scotland) Act 2003 (asp 7), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 3**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, **art. 2** (with art. 3)

VALID FROM 01/04/2005

[F270271D Review of arrangements for vulnerable witnesses

(1) In any case in which a person who is giving or is to give evidence at or for the purposes of the trial (referred to in this section as the "witness") is or appears to the court to be a vulnerable witness, the court may at any stage in the proceedings (whether before or after the commencement of the trial or before or after the witness has begun to give evidence)—

(a) on the application of the party citing or intending to cite the witness, or

(b) of its own motion,

review the current arrangements for taking the witness's evidence and, after giving the parties an opportunity to be heard, make an order under subsection (2) below.

(2) The order which may be made under this subsection is—

(a) where the current arrangements for taking the witness's evidence include the use of a special measure or combination of special measures authorised by an order under section 271A or 271C of this Act or under this subsection (referred to as the "earlier order"), an order varying or revoking the earlier order, or

(b) where the current arrangements for taking the witness's evidence do not include any special measure, an order authorising the use of such special measure or measures as the court considers most appropriate for the purpose of taking the witness's evidence.

(3) An order under subsection (2)(a) above varying an earlier order may—

(a) add to or substitute for any special measure authorised by the earlier order such other special measure as the court considers most appropriate for the purpose of taking the witness's evidence, or

(b) where the earlier order authorises the use of a combination of special measures for that purpose, delete any of the special measures so authorised.

(4) The court may make an order under subsection (2)(a) above revoking an earlier order only if satisfied—

(a) where the witness has expressed a wish to give or, as the case may be, continue to give evidence without the benefit of any special measure, that it is appropriate for the witness so to give evidence, or

(b) in any other case, that—

(i) the use, or continued use, of the special measure or measures authorised by the earlier order for the purpose of taking the witness's evidence would give rise to a significant risk of prejudice to the fairness of the trial or otherwise to the interests of justice, and

(ii) that risk significantly outweighs any risk of prejudice to the interests of the witness if the order is made.

(5) Subsection (8) of section 271C of this Act applies to the making of an order under subsection (2)(b) of this section as it applies to the making of an order under subsection (5)(a) or (7) of that section but as if the references to the witness were to the witness within the meaning of this section.

(6) In this section, "current arrangements" means the arrangements in place at the time the review under this section is begun.**]**

Textual Amendments

F270 Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006. 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 1**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

Modifications etc. (not altering text)

C104 Ss. 271-271M applied by Criminal Justice (Scotland) Act 2003 (asp 7), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 3**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, **art. 2** (with art. 3)

VALID FROM 01/04/2005

[F271 271E Vulnerable witnesses: supplementary provision

(1) Subsection (2) below applies where—

(a) a party is considering for the purposes of a child witness notice or a vulnerable witness application which of the special measures is or are the most appropriate for the purpose of taking the evidence of the person to whom the notice or application relates, or

(b) the court is making an order under section 271A(5)(a)(ii) or (b) or (9), 271C or 271D of this Act.

(2) The party or, as the case may be, the court shall—

(a) have regard to the best interests of the witness, and

(b) take account of any views expressed by—

(i) the witness (having regard, where the witness is a child witness, to the witness's age and maturity), and

(ii) where the witness is a child witness, the witness's parent (except where the parent is the accused).

(3) For the purposes of subsection (2)(b) above, where the witness is a child witness—

(a) the witness shall be presumed to be of sufficient age and maturity to form a view if aged 12 or older, and

(b) in the event that any views expressed by the witness are inconsistent with any views expressed by the witness's parent, the views of the witness shall be given greater weight.

(4) In this section—

"parent", in relation to a child witness, means any person having parental responsibilities within the meaning of section 1(3) of the Children (Scotland) Act 1995 (c. 36) in relation to the child witness,

"the witness" means—

(a) in the case referred to in subsection (1)(a) above, the person to whom the notice or application relates,

(b) in the case referred to in subsection (1)(b) above, the person to whom the order would relate.**]**

Textual Amendments

F271 Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006. 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 1**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

Modifications etc. (not altering text)

C105 Ss. 271-271M applied by Criminal Justice (Scotland) Act 2003 (asp 7), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 3**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, **art. 2** (with art. 3)

VALID FROM 01/04/2005

[F272271FThe accused

(1) For the purposes of the application of subsection (1) of section 271 of this Act to the accused (where the accused is giving or is to give evidence at or for the purposes of the trial), subsection (2) of that section shall have effect as if—

(a) for paragraph (c) there were substituted—

"(c) whether the accused is to be legally represented at the trial and, if not, the accused's entitlement to be so legally represented,", and

(b) for paragraph (e) there were substituted—

"(e) any behaviour towards the accused on the part of—

(i) any co-accused or any person who is likely to be a co-accused in the proceedings,

(ii) any witness or any person who is likely to be a witness in the proceedings, or

(iii) members of the family or associates of any of the persons mentioned in sub-paragraphs (i) and (ii) above.".

(2) Where, if the accused were to give evidence at or for the purposes of the trial, he would be a child witness—

(a) section 271A of this Act shall apply in relation to the accused subject to the following modifications—

(i) references to a child witness (except in the phrase "child witness notice") shall be read as if they were references to the accused,

(ii) references to the party citing or intending to cite a child witness shall be read as if they were references to the accused, and

(iii) subsection (6) shall have effect as if for paragraph (a) there were substituted—

"(a) it appears to the court that the accused, if he were to give evidence at or for the purposes of the trial, would be a child witness,", and

(b) section 271B of this Act shall apply in relation to the accused as if—

(i) for subsection (1) there were substituted—

"(1) This section applies where the accused—

(a) if he were to give evidence at or for the purposes of the trial would be a child witness, and

(b) is under the age of 12 on the date of commencement of the proceedings.", and

(ii) in subsection (3), references to the child witness were references to the accused.

(3) Subsection (4) below applies where the accused—

(a) considers that, if he were to give evidence at or for the purposes of the trial, he would be a vulnerable witness other than a child witness, and

(b) has not decided to give evidence without the benefit of any special measures.

(4) Where this subsection applies, subsections (2) to (11) of section 271C of this Act shall apply in relation to the accused subject to the following modifications—

(a) references to the witness shall be read as if they were references to the accused,

(b) references to the party citing or intending the cite the witness shall be read as if they were references to the accused, and

(c) in subsection (8)(b), the reference to subsection (2)(a) to (f) of section 271 of this Act shall be read as if it were a reference to that subsection as modified by subsection (1) above.

(5) Section 271D of this Act shall apply in any case where it appears to the court that the accused, if he were to give evidence at or for the purposes of the trial, would be a vulnerable witness as it applies in the case referred to in subsection (1) of that section but subject to the following modifications—

(a) references to the witness shall be read as if they were references to the accused,

(b) references to the party citing or intending to cite the witness shall be read as if they were references to the accused.

(6) Where the witness within the meaning of section 271E of this Act is the accused, that section shall have effect in relation to the witness as if—

(a) in subsection (1), paragraph (a) were omitted, and

(b) in subsection (2), the words "The party or, as the case may be," were omitted.

(7) Section 271M of this Act shall have effect, where the vulnerable witness is the accused, as if the reference in subsection (2) to the party citing the vulnerable witness were a reference to the accused.

(8) The following provisions of this Act shall not apply in relation to a vulnerable witness who is the accused—

(a) section 271H(1)(c),

(b) section 271I(3).**]**

Textual Amendments

F272 Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006. 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 1**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

Modifications etc. (not altering text)

C106 Ss. 271-271M applied by Criminal Justice (Scotland) Act 2003 (asp 7), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 3**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, **art. 2** (with art. 3)

VALID FROM 01/04/2005

[F273 271G Saving provision

Nothing in sections 271A to 271F of this Act affects any power or duty which a court has otherwise than by virtue of those sections to make or authorise any special arrangements for taking the evidence of any person.**]**

Textual Amendments

F273 Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006. 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 1**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

Modifications etc. (not altering text)

C107 Ss. 271-271M applied by Criminal Justice (Scotland) Act 2003 (asp 7), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 3**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, **art. 2** (with art. 3)

VALID FROM 01/04/2005

[F274 271H The special measures

(1) The special measures which may be authorised to be used under section 271A, 271C or 271D of this Act for the purpose of taking the evidence of a vulnerable witness are—

(a) taking of evidence by a commissioner in accordance with section 271I of this Act,

(b) use of a live television link in accordance with section 271J of this Act,

(c) use of a screen in accordance with section 271K of this Act,

(d) use of a supporter in accordance with section 271L of this Act,

(e) giving evidence in chief in the form of a prior statement in accordance with section 271M of this Act, and

(f) such other measures as the Scottish Ministers may, by order made by statutory instrument, prescribe.

(2) An order under subsection (1)(f) above shall not be made unless a draft of the statutory instrument containing the order has been laid before and approved by a resolution of the Scottish Parliament.

(3) Provision may be made by Act of Adjournal regulating, so far as not regulated by sections 271I to 271M of this Act, the use in any proceedings of any special measure authorised to be used by virtue of section 271A, 271C or 271D of this Act.]

Textual Amendments

F274 Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006. 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 1**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

Modifications etc. (not altering text)

C108 Ss. 271-271M applied by Criminal Justice (Scotland) Act 2003 (asp 7), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 3**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, **art. 2** (with art. 3)

VALID FROM 01/04/2005

271I Taking of evidence by a commissioner

(1) Where the special measure to be used is taking of evidence by a commissioner, the court shall appoint a commissioner to take the evidence of the vulnerable witness in respect of whom the special measure is to be used.

(2) Proceedings before a commissioner appointed under subsection (1) above shall be recorded by video recorder.

(3) An accused—

(a) shall not, except by leave of the court on special cause shown, be present in the room where such proceedings are taking place, but

(b) is entitled by such means as seem suitable to the court to watch and hear the proceedings.

(4) The recording of the proceedings made in pursuance of subsection (2) above shall be received in evidence without being sworn to by witnesses.

Modifications etc. (not altering text)

C109 Ss. 271-271M applied by Criminal Justice (Scotland) Act 2003 (asp 7), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006 and 1.4.2007 for certain purposes, otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 3**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

VALID FROM 01/04/2005

[F275 271J Live television link

(1) Where the special measure to be used is a live television link, the court shall make such arrangements as seem to it appropriate for the vulnerable witness in respect of whom the special measure is to be used to give evidence from a place outside the court-room where the trial is to take place by means of a live television link between that place and the court-room.

(2) The place from which the vulnerable witness gives evidence by means of the link—

(a) may be another part of the court building in which the court-room is located or any other suitable place outwith that building, and

(b) shall be treated, for the purposes of the proceedings at the trial, as part of the court-room whilst the witness is giving evidence.

(3) Any proceedings conducted by means of a live television link by virtue of this section shall be treated as taking place in the presence of the accused.

(4) Where—

(a) the live television link is to be used in proceedings in a sheriff court, but

(b) that court lacks accommodation or equipment necessary for the purpose of receiving such a link,

the sheriff may by order transfer the proceedings to any other sheriff court in the same sheriffdom which has such accommodation or equipment available.

(5) An order may be made under subsection (4) above—

(a) at any stage in the proceedings (whether before or after the commencement of the trial), or

(b) in relation to any part of the proceedings.**]**

Textual Amendments

F275 Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006. 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 1**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

Modifications etc. (not altering text)

C110 Ss. 271-271M applied by Criminal Justice (Scotland) Act 2003 (asp 7), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 3**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, **art. 2** (with art. 3)

VALID FROM 01/04/2005

[F276 271K Screens

(1) Where the special measure to be used is a screen, the screen shall be used to conceal the accused from the sight of the vulnerable witness in respect of whom the special measure is to be used.

(2) However, the court shall make arrangements to ensure that the accused is able to watch and hear the vulnerable witness giving evidence.

(3) Subsections (4) and (5) of section 271J of this Act apply for the purpose of the use of a screen under this section as they apply for the purpose of the use of a live television link under that section but as if—

(a) references to the live television link were references to the screen, and

(b) the reference to receiving such a link were a reference to the use of a screen.**]**

Textual Amendments

F276 Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006. 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 1**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**,

Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

Modifications etc. (not altering text)

C111 Ss. 271-271M applied by Criminal Justice (Scotland) Act 2003 (asp 7), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 3**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, **art. 2** (with art. 3)

VALID FROM 01/04/2005

[F277 271L Supporters

(1) Where the special measure to be used is a supporter, another person ("the supporter") nominated by or on behalf of the vulnerable witness in respect of whom the special measure is to be used may be present alongside the witness to support the witness while the witness is giving evidence.

(2) Where the person nominated as the supporter is to give evidence at the trial, that person may not act as the supporter at any time before giving evidence.

(3) The supporter shall not prompt or otherwise seek to influence the witness in the course of giving evidence.]

Textual Amendments

F277 Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006. 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 1**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

Modifications etc. (not altering text)

C112 Ss. 271-271M applied by Criminal Justice (Scotland) Act 2003 (asp 7), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 3**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

VALID FROM 01/04/2005

[F278 271M Giving evidence in chief in the form of a prior statement

(1) This section applies where the special measure to be used in respect of a vulnerable witness is giving evidence in chief in the form of a prior statement.

(2) A statement made by the vulnerable witness which is lodged in evidence for the purposes of this section by or on behalf of the party citing the vulnerable witness shall, subject to subsection (3) below, be admissible as the witness's evidence in chief, or as part of the witness's evidence in chief, without the witness being required to adopt or otherwise speak to the statement in giving evidence in court.

(3) Section 260 of this Act shall apply to a statement lodged for the purposes of this section as it applies to a prior statement referred to in that section but as if—

(a) references to a prior statement were references to the statement lodged for the purposes of this section,

(b) in subsection (1), the words "where a witness gives evidence in criminal proceedings" were omitted, and

(c) in subsection (2), paragraph (b) were omitted.

(4) This section does not affect the admissibility of any statement made by any person which is admissible otherwise than by virtue of this section.

(5) In this section, "statement" has the meaning given in section 262(1) of this Act.**]**

Textual Amendments

F278 Ss. 271-271M and preceding cross-heading substituted for s. 271 (1.4.2005, 30.11.2005, 1.4.2006. 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 1**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

Modifications etc. (not altering text)

C113 Ss. 271-271M applied by Criminal Justice (Scotland) Act 2003 (asp 7), s. 15A (as inserted (1.4.2005, 30.11.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes and otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 3**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4)); S.S.I. 2008/57, **art. 2** (with art. 3)

VALID FROM 28/03/2011

I[F279] Witness anonymity orders

Textual Amendments

F279 Ss. 271N-271Z and cross-heading inserted (prosp. with application in accordance with s. 90(3) of the amending Act) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 90(1)**, 206(1) (with s. 90(4))

271N Witness anonymity orders

(1) A court may make an order requiring such specified measures to be taken in relation to a witness in criminal proceedings as the court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings.

(2) The court may make such an order only on an application made in accordance with sections 271P and 271Q, if satisfied of the conditions set out in section 271R having considered the matters set out in section 271S.

(3) The kinds of measures that may be required to be taken in relation to a witness include in particular measures for securing one or more of the matters mentioned in subsection (4).

(4) Those matters are—

(a) that the witness's name and other identifying details may be—

(i) withheld,

(ii) removed from materials disclosed to any party to the proceedings,

(b) that the witness may use a pseudonym,

(c) that the witness is not asked questions of any specified description that might lead to the identification of the witness,

(d) that the witness is screened to any specified extent,

(e) that the witness's voice is subjected to modulation to any specified extent.

(5) Nothing in this section authorises the court to require—

(a) the witness to be screened to such an extent that the witness cannot be seen by the judge or the jury,

(b) the witness's voice to be modulated to such an extent that the witness's natural voice cannot be heard by the judge or the jury.

(6) An order made under this section is referred to in this Act as a "witness anonymity order".

(7) In this section "specified" means specified in the order concerned.

271P Applications

(1) An application for a witness anonymity order to be made in relation to a witness in criminal proceedings may be made to the court by the prosecutor or the accused.

(2) Where an application is made by the prosecutor, the prosecutor—

(a) must (unless the court directs otherwise) inform the court of the identity of the witness, but

(b) is not required to disclose in connection with the application—

(i) the identity of the witness, or

(ii) any information that might enable the witness to be identified,

to any other party to the proceedings (or to the legal representatives of any other party to the proceedings).

(3) Where an application is made by the accused, the accused—

(a) must inform the court and the prosecutor of the identity of the witness, but

(b) if there is more than one accused, is not required to disclose in connection with the application—

(i) the identity of the witness, or

(ii) any information that might enable the witness to be identified,

to any other accused (or to the legal representatives of any other accused).

(4) Subsections (5) and (6) apply where the prosecutor or the accused proposes to make an application under this section in respect of a witness.

(5) Any relevant information which is disclosed by or on behalf of that party before the determination of the application must be disclosed in such a way as to prevent—

(a) the identity of the witness, or

(b) any information that might enable the witness to be identified,

from being disclosed except as required by subsection (2)(a) or (3)(a).

(6) Despite any provision in this Act to the contrary, any relevant list, application or notice lodged, made or given by that party before the determination of the application must not—

(a) disclose the identity of the witness, or

(b) contain any other information that might enable the witness to be identified,

but the list, application or notice must, instead, refer to the witness by a pseudonym.

(7) "Relevant information" means any document or other material which falls to be disclosed, or is sought to be relied on, by or on behalf of the party concerned in connection with the proceedings or proceedings preliminary to them.

(8) "Relevant list, application or notice" means—

(a) a list of witnesses,

(b) a list of productions,

(c) a notice under section 67(5) or 78(4) relating to the witness,

(d) a motion or application under section 268, 269 or 270 relating to the witness,

(e) any other motion, application or notice relating to the witness.

(9) The court must give every party to the proceedings the opportunity to be heard on an application under this section.

(10) Subsection (9) does not prevent the court from hearing one or more of the parties to the proceedings in the absence of an accused and the accused's legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

(11) Nothing in this section is to be taken as restricting any power to make rules of court.

271Q Making and determination of applications

(1) In proceedings on indictment, an application under section 271P is a preliminary issue (and sections 79 and 87A and other provisions relating to preliminary issues apply accordingly).

(2) No application under section 271P may be made in summary proceedings by any party unless notice of the party's intention to do so has been given—

(a) if an intermediate diet has been fixed, before that diet,

(b) if no intermediate diet has been fixed, before the commencement of the trial.

(3) Subsection (2) is subject to subsections (4) and (8).

(4) In summary proceedings in which an intermediate diet has been fixed, the court may, on cause shown, grant leave for an application under section 271P to be made without notice having been given in accordance with subsection (2)(a).

(5) Subsection (6) applies where—

(a) the court grants leave for a party to make an application under section 271P without notice having been given in accordance with subsection (2)(a), or

(b) notice of a party's intention to make such an application is given in accordance with subsection (2)(b).

(6) The application must be disposed of before the commencement of the trial.

(7) Subsection (8) applies where a motion or application is made under section 268, 269 or 270 to lead the evidence of a witness.

(8) Despite section 79(1) and subsection (2) above, an application under section 271P may be made in respect of the witness at the same time as the motion or application under section 268, 269 or 270 is made.

(9) The application must be determined by the court before continuing with the trial.

(10) Where an application is made under section 271P, the court may postpone or adjourn (or further adjourn) the trial diet.

(11) In this section, "commencement of the trial" means the time when the first witness for the prosecution is sworn.

271R Conditions for making orders

(1) This section applies where an application is made for a witness anonymity order to be made in relation to a witness in criminal proceedings.

(2) The court may make the order only if it is satisfied that Conditions A to D below are met.

(3) Condition A is that the proposed order is necessary—

(a) in order to protect the safety of the witness or another person or to prevent any serious damage to property, or

(b) in order to prevent real harm to the public interest (whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on such activities or otherwise).

(4) Condition B is that, having regard to all the circumstances, the effect of the proposed order would be consistent with the accused's receiving a fair trial.

(5) Condition C is that the importance of the witness's testimony is such that in the interests of justice the witness ought to testify.

(6) Condition D is that—

(a) the witness would not testify if the proposed order were not made, or

(b) there would be real harm to the public interest if the witness were to testify without the proposed order being made.

(7) In determining whether the measures to be specified in the order are necessary for the purpose mentioned in subsection (3)(a), the court must have regard in particular to any reasonable fear on the part of the witness—

(a) that the witness or another person would suffer death or injury, or

(b) that there would be serious damage to property,

if the witness were to be identified.

271S Relevant considerations

(1) When deciding whether Conditions A to D in section 271R are met in the case of an application for a witness anonymity order, the court must have regard to—

(a) the considerations mentioned in subsection (2), and

(b) such other matters as the court considers relevant.

(2) The considerations are—

(a) the general right of an accused in criminal proceedings to know the identity of a witness in the proceedings,

(b) the extent to which the credibility of the witness concerned would be a relevant factor when the witness's evidence comes to be assessed,

(c) whether evidence given by the witness might be material in implicating the accused,

(d) whether the witness's evidence could be properly tested (whether on grounds of credibility or otherwise) without the witness's identity being disclosed,

(e) whether there is any reason to believe that the witness—

(i) has a tendency to be dishonest, or

(ii) has any motive to be dishonest in the circumstances of the case,

having regard in particular to any previous convictions of the witness and to any relationship between the witness and the accused or any associates of the accused,

(f) whether it would be reasonably practicable to protect the witness's identity by any means other than by making a witness anonymity order specifying the measures that are under consideration by the court.

271T Direction to jury

(1) Subsection (2) applies where, in a trial on indictment, any evidence has been given by a witness at a time when a witness anonymity order applied to the witness.

(2) The judge must give the jury such direction as the judge considers appropriate to ensure that the fact that the order was made in relation to the witness does not prejudice the accused.

271U Discharge and variation of order

(1) This section applies where a court has made a witness anonymity order in relation to any criminal proceedings.

(2) The court may discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of the provisions of sections 271R and 271S that applied to the making of the order.

(3) The court may do so—

(a) on an application made by a party to the proceedings if there has been a material change of circumstances since the relevant time, or

(b) on its own initiative.

(4) The court must give every party to the proceedings the opportunity to be heard—

(a) before determining an application made to it under subsection (3)(a), and

(b) before discharging or varying the order on its own initiative.

(5) Subsection (4) does not prevent the court from hearing one or more of the parties to the proceedings in the absence of an accused and the accused's legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

(6) In subsection (3)(a) "the relevant time" means—

(a) the time when the order was made, or

(b) if a previous application has been made under that subsection, the time when the application (or the last application) was made.

271V Appeals

(1) The prosecutor or the accused may appeal to the High Court against—

(a) the making of a witness anonymity order under section 271N,

(b) the kinds of measures that are required to be taken in relation to a witness under a witness anonymity order made under that section,

(c) the refusal to make a witness anonymity order under that section,

(d) the discharge of a witness anonymity order under section 271U,

(e) the variation of a witness anonymity order under that section, or

(f) the refusal to discharge or vary a witness anonymity order under that section.

(2) The appeal may be brought only with the leave of the court of first instance, granted—

(a) on the motion of the party making the appeal, or

(b) on its own initiative.

(3) The procedure in relation to the appeal is to be prescribed by Act of Adjournal.

(4) If an appeal is brought under this section—

(a) the period between the lodging of the appeal and its determination does not count towards any time limit applying in respect of the case,

(b) the court of first instance or the High Court may do either or both of the following—

(i) postpone or adjourn (or further adjourn) the trial diet,

(ii) extend any time limit applying in respect of the case.

(5) An appeal under this section does not affect any right of appeal in relation to any other decision of any court in the criminal proceedings.

271W Appeal against the making of a witness anonymity order

(1) This section applies where—

(a) an appeal is brought under section 271V(1)(a) against the making of a witness anonymity order, and

(b) the High Court determines that the decision of the judge at first instance was wrong in law.

(2) The High Court must discharge the order and the trial is to proceed as if the order had not been made.

271X Appeal against the refusal to make a witness anonymity order

(1) This section applies where—

(a) an appeal is brought under section 271V(1)(c) against the refusal to make a witness anonymity order in relation to a witness in criminal proceedings, and

(b) the High Court determines that the decision of the judge at first instance was wrong in law.

(2) The High Court must make an order requiring such specified measures to be taken in relation to the witness in the proceedings as the court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings.

271Y Appeal against a variation of a witness anonymity order

(1) This section applies where—

(a) an appeal is brought under section 271V(1)(e) against a variation of a witness anonymity order, and

(b) the High Court determines that the decision of the judge at first instance was wrong in law.

(2) The High Court must discharge the variation.

(3) If the High Court determines that it is appropriate to make an additional variation in view of the provisions of sections 271R and 271S, the court may do so.

271Z Appeal against a refusal to vary or discharge a witness anonymity order

(1) This section applies where—

(a) an appeal is brought under section 271V(1)(f) against a refusal to discharge or vary a witness anonymity order, and

(b) the High Court determines that the decision of the judge at first instance was wrong in law.

(2) The High Court must discharge the order, or make the variation, as the case requires.

(3) If, in the case of a variation, the High Court determines that it is appropriate to make an additional variation in view of the provisions of sections 271R and 271S, the court may do so.**]**

Evidence on commission and from abroad

272 Evidence by letter of request or on commission.

(1) In any criminal proceedings in the High Court or the sheriff court the prosecutor or the defence may, at an appropriate time, apply to a judge of the court in which the trial is to take place (or, if that is not yet known, to a judge of the High Court) for—

(a) the issue of a letter of request to a court, or tribunal, exercising jurisdiction in a country or territory outside the United Kingdom, Channel Islands and Isle of Man for the examination of a witness resident in that country or territory; or

(b) the appointment of a commissioner to examine, at any place in the United Kingdom, Channel Islands, or Isle of Man, a witness who—

(i) by reason of being ill or infirm is unable to attend the trial diet; or

(ii) is not ordinarily resident in, and is, at the time of the trial diet, unlikely to be present in, the United Kingdom, Channel Islands or the Isle of Man.

(2) A hearing, as regards any application under subsection (1) above by a party, shall be conducted in chambers but may be dispensed with if the application is not opposed.

(3) An application under subsection (1) above may 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) there would be no unfairness to the other party were such evidence to be received in the form of the record of an examination conducted by virtue of that subsection.

(4) Any such record as is mentioned in paragraph (b) of subsection (3) above shall, without being sworn to by witnesses, be received in evidence in so far as it either accords with the averment mentioned in paragraph (a) of that subsection or can be so received without unfairness to either party.

(5) Where any such record as is mentioned in paragraph (b) of subsection (3) 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 (4) above unless it is accompanied by a transcript of its contents.

(6) The procedure as regards the foregoing provisions of this section shall be prescribed by Act of Adjournal; and without prejudice to the generality of the power to make it, such an Act of Adjournal may provide for the appointment of a person before whom evidence may be taken for the purposes of this section.

(7) In subsection (1) above, "appropriate time" means as regards—

(a) solemn proceedings, any time before the oath is administered to the jury;

(b) summary proceedings, any time before the first witness is sworn,

or (but only in relation to an application under paragraph (b) of that subsection) any time during the course of the trial if the circumstances on which the application is based had not arisen, or would not have merited such application, within the period mentioned in paragraph (a) or, as the case may be, (b) of this subsection.

(8) In subsection (3) and (4) 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.

(9) This section is without prejudice to any existing power at common law to adjourn a trial diet to the place where a witness is.

273 Television link evidence from abroad.

(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.

VALID FROM 28/03/2011

[F280 Evidence from other parts of the United Kingdom

Textual Amendments

F280 S. 273A and cross-heading inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 91(3)**, 206(1)

273A Television link evidence from other parts of the United Kingdom

(1) In any criminal 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 within the United Kingdom but outside Scotland,

(b) an application under this section 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) may apply for the issue of a letter of request.

(3) The application must be made 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.

(4) The judge may, on an application under this section, issue a letter to a court or tribunal exercising jurisdiction in the place where the witness is ordinarily resident requesting assistance in facilitating the giving of evidence by that witness through a live television link, if the judge is satisfied of the matters set out in subsection (5).

(5) Those matters are—

(a) that the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial,

(b) that 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.**]**

Evidence relating to sexual offences

274 Restrictions on evidence relating to sexual offences.

(1) In any trial of a person on any charge to which this section applies, subject to section 275 of this Act, the court shall not admit, or allow questioning designed to elicit, evidence which shows or tends to show that the complainer—

(a) is not of good character in relation to sexual matters;

(b) is a prostitute or an associate of prostitutes; or

(c) has at any time engaged with any person in sexual behaviour not forming part of the subject matter of the charge.

(2) This section applies to a charge of committing or attempting to commit any of the following offences, that is to say—

(a) rape;

(b) sodomy;

(c) clandestine injury to women;

(d) assault with intent to rape;

(e) indecent assault;

(f) indecent behaviour (including any lewd, indecent or libidinous practice or behaviour);

(g) an offence under section 106(1)(a) or 107 of the [M104]Mental Health (Scotland) Act 1984 (unlawful sexual intercourse with mentally handicapped female or with patient); or

(h) an offence under any of the following provisions of the [M105]Criminal Law (Consolidation) (Scotland) Act 1995—

(i) sections 1 to 3 (incest and related offences);

(ii) section 5 (unlawful sexual intercourse with girl under 13 or 16);

(iii) section 6 (indecent behaviour toward girl between 12 and 16);

(iv) section 7(2) and (3) (procuring by threats etc.);

(v) section 8 (abduction and unlawful detention);

(vi) section 13(5) (homosexual offences)

(3) In this section "complainer" means the person against whom the offence referred to in subsection (2) above is alleged to have been committed.

(4) This section does not apply to questioning, or evidence being adduced, by the Crown.

Marginal Citations
M104 1984 c.36.
M105 1995 c.39.

275 Exceptions to restrictions under section 274.

(1) Notwithstanding section 274 of this Act, in any trial of an accused on any charge to which that section applies, where the court is satisfied on an application by the accused—

(a) that the questioning or evidence referred to in subsection (1) of that section is designed to explain or rebut evidence adduced, or to be adduced, otherwise than by or on behalf of the accused;

(b) that the questioning or evidence referred to in paragraph (c) of that subsection—

(i) is questioning or evidence as to sexual behaviour which took place on the same occasion as the sexual behaviour forming the subject matter of the charge; or

(ii) is relevant to the defence of incrimination; or

(c) that it would be contrary to the interests of justice to exclude the questioning or evidence referred to in that subsection,

the court shall allow the questioning or, as the case may be, admit the evidence.

(2) Where questioning or evidence is or has been allowed or admitted under this section, the court may at any time limit as it thinks fit the extent of that questioning or evidence.

(3) Any application under this section shall be made in the course of the trial but in the absence of the jury, the complainer, any person cited as a witness and the public.

VALID FROM 01/11/2002

[F281 275A Disclosure of accused's previous convictions where court allows questioning or evidence under section 275

(1) Where, under section 275 of this Act, a court on the application of the accused allows such questioning or admits such evidence as is referred to in section 274(1) of this Act, the prosecutor shall forthwith place before the presiding judge any previous relevant conviction of the accused.

(2) Any conviction placed before the judge under subsection (1) above shall, unless the accused objects, be—

(a) in proceedings on indictment, laid before the jury;

(b) in summary proceedings, taken into consideration by the judge.

(3) An extract of such a conviction may not be laid before the jury or taken into consideration by the judge unless such an extract was appended to the notice, served on the accused under section 69(2) or, as the case may be, 166(2) of this Act, which specified that conviction.

(4) An objection under subsection (2) above may be made only on one or more of the following grounds—

(a) where the conviction bears to be a relevant conviction by virtue only of paragraph (b) of subsection (10) below, that there was not a substantial sexual element present in the commission of the offence for which the accused has been convicted;

(b) that the disclosure or, as the case may be, the taking into consideration of the conviction would be contrary to the interests of justice;

(c) in proceedings on indictment, that the conviction does not apply to the accused or is otherwise inadmissible;

(d) in summary proceedings, that the accused does not admit the conviction.

(5) Where—

(a) an objection is made on one or more of the grounds mentioned in paragraphs (b) to (d) of subsection (4) above; and

(b) an extract of the conviction in respect of which the objection is made was not appended to the notice, served on the accused under section 69(2) or, as the case may be, 166(2) above, which specified that conviction,

the prosecutor may, notwithstanding subsection (3) above, place such an extract conviction before the judge.

(6) In summary proceedings, the judge may, notwithstanding subsection (2)(b) above, take into consideration any extract placed before him under subsection (5) above for the purposes only of considering the objection in respect of which the extract is disclosed.

(7) In entertaining an objection on the ground mentioned in paragraph (b) of subsection (4) above, the court shall, unless the contrary is shown, presume that the disclosure, or, as the case may be, the taking into consideration, of a conviction is in the interests of justice.

(8) An objection on the ground mentioned in paragraph (c) of subsection (4) above shall not be entertained unless the accused has, under subsection (2) of section 69 of this Act, given intimation of the objection in accordance with subsection (3) of that section.

(9) In entertaining an objection on the ground mentioned in paragraph (d) of subsection (4) above, the court shall require the prosecutor to withdraw the conviction or adduce evidence in proof thereof.

(10) For the purposes of this section a "relevant conviction" is, subject to subsection (11) below—

(a) a conviction for an offence to which section 288C of this Act applies by virtue of subsection (2) thereof; or

(b) where a substantial sexual element was present in the commission of any other offence in respect of which the accused has previously been convicted, a conviction for that offence,

which is specified in a notice served on the accused under section 69(2) or, as the case may be, 166(2) of this Act.

(11) A conviction for an offence other than an offence to which section 288C of this Act applies by virtue of subsection (2) thereof is not a relevant conviction for the purposes of this section unless an extract of that conviction containing information which indicates that a sexual element was present in the commission of the offence was appended to the notice, served on the accused under section 69(2) or, as the case may be, 166(2) of this Act, which specified that conviction.**]**

Textual Amendments

F281 Ss. 275A, 275B inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), **s. 10(4)**; S.S.I. 2002/443, **art. 3** (with art. 4(5))

VALID FROM 01/11/2002

[F281 275B Provisions supplementary to sections 275 and 275A

(1) An application for the purposes of subsection (1) of section 275 of this Act shall not, unless on special cause shown, be considered by the court unless made not less than 14 clear days before the trial diet.

(2) Where—

(a) such an application is considered; or

(b) any objection under subsection (2) of section 275A of this Act is entertained,

during the course of the trial, the court shall consider that application or, as the case may be, entertain that objection in the absence of the jury, the complainer, any person cited as a witness and the public.**]**

Textual Amendments

F281 Ss. 275A, 275B inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), **s. 10(4)**; S.S.I. 2002/443, **art. 3** (with art. 4(5))

VALID FROM 01/04/2005

[F282 Expert evidence as to subsequent behaviour of complainer

Textual Amendments

F282 S. 275C and preceding cross-heading inserted (1.4.2005) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 5**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4)

275C Expert evidence as to subsequent behaviour of complainer in certain cases

(1) This section applies in the case of proceedings in respect of any offence to which section 288C of this Act applies.

(2) Expert psychological or psychiatric evidence relating to any subsequent behaviour or statement of the complainer is admissible for the purpose of rebutting any inference adverse to the complainer's credibility or reliability as a witness which might otherwise be drawn from the behaviour or statement.

(3) In subsection (2) above—

"complainer" means the person against whom the offence to which the proceedings relate is alleged to have been committed,

"subsequent behaviour or statement" means any behaviour or statement subsequent to, and not forming part of the acts constituting, the offence to which the proceedings relate and which is not otherwise relevant to any fact in issue at the trial.

(4) This section does not affect the admissibility of any evidence which is admissible otherwise than by virtue of this section.**]**

Biological material

276 Evidence of biological material.

(1) Evidence as to the characteristics and composition of any biological material deriving from human beings or animals shall, in any criminal proceedings, be admissible notwithstanding that neither the material nor a sample of it is lodged as a production.

(2) A party wishing to lead such evidence as is referred to in subsection (1) above shall, where neither the material nor a sample of it is lodged as a production, make the material or a sample of it available for inspection by the other party unless the material constitutes a hazard to health or has been destroyed in the process of analysis.

Transcripts and records

277 Transcript of police interview sufficient evidence.

(1) Subject to subsection (2) below, for the purposes of any criminal proceedings, a document certified by the person who made it as an accurate transcript made for the prosecutor of the contents of a tape (identified by means of a label) purporting to be a recording of an interview between—

(a) a police officer and an accused person; or

(b) a person commissioned, appointed or authorised under section 6(3) of the [M106]Customs and Excise Management Act 1979 and an accused person,

shall be received in evidence and be sufficient evidence of the making of the transcript and of its accuracy.

(2) Subsection (1) above shall not apply to a transcript—

(a) unless a copy of it has been served on the accused not less than 14 days before his trial; or

(b) if the accused, not less than six days before his trial, or by such later time before his trial as the court may in special circumstances allow, has served notice on the prosecutor that the accused challenges the making of the transcript or its accuracy.

(3) A copy of the transcript or a notice under subsection (2) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the transcript or notice, together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

(4) Where subsection (1) above does not apply to a transcript, if the person who made the transcript is called as a witness his evidence shall be sufficient evidence of the making of the transcript and of its accuracy.

Marginal Citations
M106 1979 c.2.

278 Record of proceedings at examination as evidence.

(1) Subject to subsection (2) below, the record made, under section 37 of this Act (incorporating any rectification authorised under section 38(1) of this Act), of proceedings at the examination of an accused shall be received in evidence without being sworn to by witnesses, and it shall not be necessary in proceedings on indictment to insert the names of any witnesses to the record in any list of witnesses, either for the prosecution or for the defence.

(2) On the application of either an accused or the prosecutor—

(a) in proceedings on indictment, subject to sections 37(5) and 72(1)(b)(iv) of this Act, the court may determine that the record or part of the record shall not be read to the jury; and

(b) in summary proceedings, subject to the said section 37(5) and to subsection (4) below, the court may refuse to admit the record or some part of the record as evidence.

(3) At the hearing of an application under subsection (2) above, it shall be competent for the prosecutor or the defence to adduce as witnesses the persons who were present during the proceedings mentioned in subsection (1) above and for either party to examine those witnesses upon any matters regarding the said proceedings.

(4) In summary proceedings, except on cause shown, an application under subsection (2)(b) above shall not be heard unless notice of at least 10 clear days has been given to the court and to the other parties.

(5) In subsection (2) above, the "record" comprises—

(a) as regards any trial of an indictment, each record included, under section 68(1) of this Act, in the list of productions; and

(b) as regards a summary trial, each record which it is sought to have received under subsection (1) above.

Documentary evidence

279 Evidence from documents.

Schedule 8 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.

[F283 Evidence from certain official documents]

Textual Amendments

F283 S. 279A and preceding cross-heading inserted (1.8.1997) by 1997 c. 48, **s. 28(2)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F284 279A Evidence from certain official documents.

(1) Any letter, minute or other official document issuing from the office of or in the custody of any of the departments of state or government in the United Kingdom which—

(a) is required to be produced in evidence in any prosecution; and

(b) according to the rules and regulations applicable to such departments may competently be so produced,

shall when so produced be *prima facie* evidence of the matters contained in it without being produced or sworn to by any witness.

(2) A copy of any such document as is mentioned in subsection (1) above bearing to be certified by any person having authority to certify it shall be treated as equivalent to the original of that document and no proof of the signature of the person certifying the copy or of his authority to certify it shall be necessary.

(3) 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 a copy of such an order, shall when produced in a prosecution be received as evidence of the

due making, confirmation, and existence of the order without being sworn to by any witness and without any further or other proof.

(4) Subsection (3) above is without prejudice to any right competent to the accused to challenge any order such as is mentioned in that subsection as being*ultra vires* of the authority making it or on any other competent ground.

(5) Where an order such as is mentioned in subsection (3) above is referred to in the indictment or, as the case may be, the complaint, it shall not be necessary to enter it in the record of the proceedings as a documentary production.

(6) The provisions of this section are in addition to, and not in derogation of, any powers of proving documents conferred by statute or existing at common law.

Textual Amendments

F284 S. 279A and preceding cross-heading inserted (1.8.1997) by 1997 c. 48, **s. 28(2)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

Routine evidence

280 Routine evidence.

(1) For the purposes of any proceedings for an offence under any of the enactments specified in column 1 of Schedule 9 to this Act, a certificate purporting to be signed by a person or persons specified in column 2 thereof, and certifying the matter specified in column 3 thereof shall, subject to subsection (6) below, be sufficient evidence of that matter and of the qualification or authority of that person or those persons.

(2) The Secretary of State may by order—

(a) amend or repeal the entry in Schedule 9 to this Act in respect of any enactment; or

(b) insert in that Schedule an entry in respect of a further enactment.

(3) An order under subsection (2) above may make such transitional, incidental or supplementary provision as the Secretary of State considers necessary or expedient in connection with the coming into force of the order.

(4) For the purposes of any criminal proceedings, a report purporting to be signed by two authorised forensic scientists shall, subject to subsection (5) below, be sufficient evidence of any fact or conclusion as to fact contained in the report and of the authority of the signatories.

(5) A forensic scientist is authorised for the purposes of subsection (4) above if—

(a) he is authorised for those purposes by the Secretary of State; or

(b) he—

(i) is a constable or is employed by a police authority under section 9 of the [M107]Police (Scotland) Act 1967;

(ii) possesses such qualifications and experience as the Secretary of State may for the purposes of that subsection by order prescribe; and

(iii) is authorised for those purposes by the chief constable of the police force maintained for the police area of that authority.

(6) Subsections (1) and (4) above shall not apply to a certificate or, as the case may be, report tendered on behalf of the prosecutor or the accused—

(a) unless a copy has been served on the other party not less than fourteen days before the trial; or

(b) where the other party, not more than seven days after the date of service of the copy on him under paragraph (a) above or by such later time as the court may in special circumstances allow, has served notice on the first party that **[**[F285]he**]** challenges the matter, qualification or authority mentioned in subsection (1) above or as the case may be the fact, conclusion or authority mentioned in subsection (4) above.

(7) A copy of a certificate or, as the case may be, report required by subsection (6) above, to be served on the accused or the prosecutor or of a notice required by that subsection or by subsection (1) or (2) of section 281 of this Act to be served on the prosecutor shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served such certificate or notice, together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of such a copy.

(8) Where, following service of a notice under subsection (6)(b) above, evidence is given in relation to a report referred to in subsection (4) above by both of the forensic scientists purporting to have signed the report, the evidence of those forensic scientists shall be sufficient evidence of any fact (or conclusion as to fact) contained in the report.

(9) At any trial of an offence it shall be presumed that the person who appears in answer to the complaint is the person charged by the police with the offence unless the contrary is alleged.

(10) An order made under subsection (2) or (5)(b)(ii) above shall be made by statutory instrument.

(11) No order shall be made under subsection (2) above unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

(12) A statutory instrument containing an order under subsection (5)(b)(ii) above shall be subject to annulment pursuant to a resolution of either House of Parliament.

Textual Amendments

F285 Word in s. 280(6)(b) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(32)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

Marginal Citations

M107 1967 c.77.

281 Routine evidence: autopsy and forensic science reports.

(1) Where in a trial an autopsy report is lodged as a production by the prosecutor it shall be presumed that the body of the person identified in that report is the body of the deceased identified in the indictment or complaint, unless the accused not less than six days before the trial, or by such later time before the trial as the court may in special circumstances allow, gives notice that the contrary is alleged.

(2) At the time of lodging an autopsy or forensic science report as a production the prosecutor may intimate to the accused that it is intended that only one of the pathologists or forensic scientists (whom the prosecutor shall specify) purporting to have signed the report shall be called to give evidence in respect thereof; and the evidence of that pathologist or forensic scientist shall be sufficient evidence of any fact or conclusion as to fact contained in the report and of the qualifications of the signatories, unless the accused, not less than six days before the trial or by such later time before the trial as the court may in special circumstances allow, serves notice on the prosecutor that he requires the attendance at the trial of the other pathologist or forensic scientist also.

(3) Where, following service of a notice by the accused under subsection (2) above, evidence is given in relation to an autopsy or forensic science report by both of the pathologists or forensic scientists purporting to have signed the report, the evidence of those pathologists or forensic scientists shall be sufficient evidence of any fact (or conclusion as to fact) contained in the report.

VALID FROM 01/04/2005

[F286 281A Routine evidence: reports of identification prior to trial

(1) Where in a trial the prosecutor lodges as a production a report naming—

(a) a person identified in an identification parade or other identification procedure by a witness, and

(b) that witness,

it shall be presumed, subject to subsection (2) below, that the person named in the report as having been identified by the witness is the person of the same name who appears in answer to the indictment or complaint.

(2) That presumption shall not apply—

(a) unless the prosecutor has, **[**F287 by the required time**]** , served on the accused a copy of the report and a notice that he intends to rely on the presumption, or

(b) if the accused—

(i) not more than 7 days after the date of service of the copy of the report, or

(ii) by such later time as the court may in special circumstances allow,

has served notice on the prosecutor that he intends to challenge the facts stated in the report.

F288 **[** (3) In subsection (2)(a) above, "the required time" means—

(a) in the case of proceedings in the High Court—

(i) not less than 14 clear days before the preliminary hearing; or

(ii) such later time, being not less than 14 clear days before the trial, as the court may, in special circumstances, allow;

(b) in any other case, not less than 14 clear days before the trial.**]]**

Textual Amendments

F286 S. 281A inserted (1.4.2005) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 4**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4)

F287 Words in s. 281A(2)(a) substituted (1.4.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 50(a)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5)

F288 S. 281A(3) inserted (1.4.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 50(b)**; S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5) (as amended (31.1.2005) by S.S.I. 2005/40, **art. 3(5)**)

Sufficient evidence

282 Evidence as to controlled drugs and medicinal products.

(1) For the purposes of any criminal proceedings, evidence given by an authorised forensic scientist, either orally or in a report purporting to be signed by him, that a substance which satisfies either of the conditions specified in subsection (2) below is—

(a) a particular controlled drug or medicinal product; or

(b) a particular product which is listed in the British Pharmacopoeia as containing a particular controlled drug or medicinal product,

shall, subject to subsection (3) below, be sufficient evidence of that fact notwithstanding that no analysis of the substance has been carried out.

(2) Those conditions are—

(a) that the substance is in a sealed container bearing a label identifying the contents of the container; or

(b) that the substance has a characteristic appearance having regard to its size, shape, colour and manufacturer's mark.

(3) A party proposing to rely on subsection (1) above ("the first party") shall, not less than 14 days before the trial diet, serve on the other party ("the second party")—

(a) a notice to that effect; and

(b) where the evidence is contained in a report, a copy of the report,

and if the second party serves on the first party, not more than seven days after the date of service of the notice on him, a notice that he does not accept the evidence as to the identity of the substance, subsection (1) above shall not apply in relation to that evidence.

(4) A notice or copy report served in accordance with subsection (3) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the notice or copy together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

(5) In this section—

"controlled drug" has the same meaning as in the [M108]Misuse of Drugs Act 1971; and

"medicinal product" has the same meaning as in the [M109]Medicines Act 1968.

Marginal Citations
M108 1971 c.38.
M109 1968 c.67.

283 Evidence as to time and place of video surveillance recordings.

(1) For the purposes of any criminal proceedings, a certificate purporting to be signed by a person responsible for the operation of a video surveillance system and certifying—

(a) the location of the camera;

(b) the nature and extent of the person's responsibility for the system; and

(c) that visual images recorded on a particular video tape are images, recorded by the system, of events which occurred at a place specified in the certificate at a time and date so specified,

shall, subject to subsection (2) below, be sufficient evidence of the matters contained in the certificate.

(2) A party proposing to rely on subsection (1) above ("the first party") shall, not less than 14 days before the trial diet, serve on the other party ("the second party") a copy of the certificate and, if the second party serves on the first party, not more than seven days after the date of service of the copy certificate on him, a notice that he does not accept the evidence contained in the certificate, subsection (1) above shall not apply in relation to that evidence.

(3) A copy certificate or notice served in accordance with subsection (2) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

(4) In this section, "video surveillance system" means apparatus consisting of a camera mounted in a fixed position and associated equipment for transmitting and recording visual images of events occurring in any place.

284 Evidence in relation to fingerprints.

(1) For the purpose of any criminal proceedings, a certificate purporting to be signed by **[**[F289]a person authorised in that behalf by a chief constable**]** and certifying that **[**[F289]relevant physical data (within the meaning of section 18(7A) of this Act) was taken from or provided by**]**a person designated in the certificate at a time , date and place specified therein shall, subject to subsetion (2) below, be sufficient evidence of the facts contained in the certificate.

[[F290](2) A party proposing to rely on subsection (1) above ("the first party") shall, not less than 14 days before the trial diet, serve on any other party to the proceedings a copy of the certificate, and such other party shall not be entitled to challenge the sufficiency of the evidence contained within the certificate.

(2A) Where the first party does not serve a copy of the certificate on any other party as mentioned in subsection (2) above, he shall not be entitled to rely on subsection (1) above as respects that party.**]**

(3) A copy certificate or notice served in accordance with subsection (2) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

Textual Amendments

F289 Words in s. 284(1) substituted (1.8.1997) by 1997 c. 48, **s. 47(4)(a)(i)(ii)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F290 S. 284(2)(2A) substituted (1.8.1997) for s. 284(2) by 1997 c. 48, **s. 47(4)(b)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

Proof of previous convictions

285 Previous convictions: proof, general.

(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 subsection and subsections (2) to (6) below 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 **[**F291the Secretary of State or by a person authorised by him to sign such a certificate**]**or the Commissioner of Police of the Metropolis, containing particulars relating to a conviction extracted from the criminal records kept **[**F291in pursuance of a service provided and maintained by the Secretary of State under or by virtue of section 36 of the M110Police (Scotland) Act 1967 or by or on behalf of the Commissioner of Police of the Metropolis**]**, 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 rules for the time being in force under sections 12 and 39 of the M111Prisons (Scotland) Act 1989, or regulations for the time being in force under section 16 of the M112Prison 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 **[**[F292]the Secretary of State or by a person authorised by him to sign such a certificate**]**, and certifying that the fingerprints, copies of which are certified as mentioned in subsection (2) above by **[**[F292]the Secretary of State or by a person authorised by him to sign such a certificate or by or on behalf of**]** 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 mentioned in subsection (3) or (4) above, 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) An extract conviction of any crime committed in any part of the United Kingdom bearing to have been issued by an officer whose duties include the issue of extract convictions shall be received in evidence without being sworn to by witnesses.

(7) It shall be competent to prove a previous conviction or any fact relevant to the admissibility of the conviction by witnesses, although the name of any such witness is not included in the list served on the accused; and the accused shall be entitled to examine witnesses with regard to such conviction or fact.

(8) An official of any prison in which the accused has been detained on such conviction shall be a competent and sufficient witness to prove its application to the accused, although he may not have been present in court at the trial to which such conviction relates.

(9) The method of proving a previous conviction authorised by this section shall be in addition to any other method of proving the conviction.

[[F293](10) In this section "fingerprint" includes any record of the skin of a person's finger created by a device approved by the Secretary of State under section 18(7B) of this Act.**]**

Textual Amendments

F291 Words in s. 285(2) substituted (1.8.1997) by 1997 c. 48, **s. 59(2)(a)(b)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F292 Words in s. 285(5) substituted (1.8.1997) by 1997 c. 48, **s. 59(3)(a)(b)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

F293 S. 285(10) inserted (1.8.1997) by 1997 c. 48, **s. 47(5)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

Marginal Citations

M110 1967 c.77.

M111 1989 c.45.

M112 1952 c.52.

286 Previous convictions: proof in support of substantive charge.

(1) Without prejudice to section 285(6) to (9) or, as the case may be, section 166 of this Act, where proof of a previous conviction is competent in support of a substantive charge, any such conviction or an extract of it shall, if—

(a) it purports to relate to the accused and to be signed by the clerk of court having custody of the record containing the conviction; and

(b) a copy of it has been served on the accused not less than 14 days before the trial diet,

be sufficient evidence of the application of the conviction to the accused unless, within seven days of the date of service of the copy on him, he serves notice on the prosecutor that he denies that it applies to him.

(2) A copy of a conviction or extract conviction served under subsection (1) above shall be served on the accused in such manner as may be prescribed by Act of Adjournal, and a written execution purporting to be signed by the person who served the copy together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of the copy.

VALID FROM 27/06/2003

[F294 286A Proof of previous conviction by court in other member State

(1) A previous conviction by a court in another member State of the European Union may be proved against any person in any criminal proceedings by the production of evidence of the conviction and by showing that his fingerprints and those of the person convicted are the fingerprints of the same person.

(2) A certificate—

(a) bearing—

(i) to have been sealed with the official seal of a Minister of the State in question; and

(ii) to contain particulars relating to a conviction extracted from the criminal records of that State; and

(b) including copies of fingerprints and certifying that those copies—

(i) are of fingerprints appearing from those records to have been taken from the person convicted on the occasion of the conviction, or on the occasion of his last conviction; and

(ii) would be admissible in evidence in criminal proceedings in that State as a record of the skin of that person's fingers,

shall be sufficient evidence of the conviction or, as the case may be, of the person's last conviction and of all preceding convictions and that the copies of the fingerprints included in the certificate are copies of the fingerprints of the person convicted.

(3) A conviction bearing to have been—

(a) extracted from the criminal records of the State in question; and

(b) issued by an officer of that State whose duties include the issuing of such extracts,

shall be received in evidence without being sworn to by witnesses.

(4) Subsection (9) of section 285 of this Act applies in relation to this section as it does in relation to that section.**]**

Textual Amendments

F294 S. 286A inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 57(4)**, 89; S.S.I. 2003/288, **art. 2**, Sch.

PART XIII

MISCELLANEOUS

Lord Advocate

287 Demission of office by Lord Advocate.

(1) All indictments which have been raised by a Lord Advocate shall remain effective notwithstanding his subsequently having died or demitted office and may be taken up and proceeded with by his successor.

(2) During any period when the office of Lord Advocate is vacant it shall be lawful to indict accused persons in name of the Solicitor General then in office.

(3) The advocates depute shall not demit office when a Lord Advocate dies or demits office but shall continue in office until their successors receive commissions.

(4) The advocates depute and procurators fiscal shall have power, notwithstanding any vacancy in the office of Lord Advocate, to take up and proceed with any indictment which—

(a) by virtue of subsection (1) above, remains effective; or

(b) by virtue of subsection (2) above, is in the name of the Solicitor General.

(5) For the purposes of this Act, where, but for this subsection, demission of office by one Law Officer would result in the offices of both being vacant, he or, where both demit office on the same day, the person demitting the office of Lord Advocate shall be deemed to continue in office until the warrant of appointment of the person succeeding to the office of Lord Advocate is granted.

(6) The Lord Advocate shall enter upon the duties of his office immediately upon the grant of his warrant of appointment; and he shall as soon as is practicable thereafter take the oaths of office before the Secretary of State or any Lord Commissioner of Justiciary.

288 Intimation of proceedings in High Court to Lord Advocate.

(1) In any proceeding in the High Court (other than a proceeding to which the Lord Advocate or a procurator fiscal is a party) it shall be competent for the court to order intimation of such proceeding to the Lord Advocate.

(2) On intimation being made to the Lord Advocate under subsection (1) above, the Lord Advocate shall be entitled to appear and be heard in such proceeding.

VALID FROM 20/05/1999

[F295 Devolution issues

Textual Amendments

F295 Ss. 288A, 288B and cross-heading inserted (20.5.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 32(2)** (with s. 126(3)-(11)); S.I. 1998/3178, art. 2(2), **Sch. 4**

288A F296 Rights of appeal for Advocate General: devolution issues.

(1) This section applies where—

(a) a person is acquitted or convicted of a charge (whether on indictment or in summary proceedings), and

(b) the Advocate General for Scotland was a party to the proceedings in pursuance of paragraph 6 of Schedule 6 to the Scotland Act 1998 (devolution issues).

(2) The Advocate General for Scotland may refer any devolution issue which has arisen in the proceedings to the High Court for their opinion; and the Clerk of Justiciary shall send to the person acquitted or convicted and to any solicitor who acted for that person at the trial, a copy of the reference and intimation of the date fixed by the Court for a hearing.

(3) The person may, not later than seven days before the date so fixed, intimate in writing to the Clerk of Justiciary and to the Advocate General for Scotland either—

(a) that he elects to appear personally at the hearing, or

(b) that he elects to be represented by counsel at the hearing,

but, except by leave of the Court on cause shown, and without prejudice to his right to attend, he shall not appear or be represented at the hearing other than by and in conformity with an election under this subsection.

(4) Where there is no intimation under subsection (3)(b), the High Court shall appoint counsel to act at the hearing as amicus curiae.

(5) The costs of representation elected under subsection (3)(b) or of an appointment under subsection (4) shall, after being taxed by the Auditor of the Court of Session, be paid by the Advocate General for Scotland out of money provided by Parliament.

(6) The opinion on the point referred under subsection (2) shall not affect the acquittal or (as the case may be) conviction in the trial.*]*

Textual Amendments

F296 Ss. 288A-288B and preceding cross-heading inserted (20.5.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 32(2)** (with s. 126(3)-(11)); S.I. 1998/3178, art. 2(2), **Sch. 4**

F297 288B Appeals to Judicial Committee of the Privy Council.

(1) This section applies where the Judicial Committee of the Privy Council determines an appeal under paragraph 13(a) of Schedule 6 to the Scotland Act 1998 against a determination of a devolution issue by the High Court in the ordinary course of proceedings.

(2) The determination of the appeal shall not affect any earlier acquittal or earlier quashing of any conviction in the proceedings.

(3) Subject to subsection (2) above, the High Court shall have the same powers in relation to the proceedings when remitted to it by the Judicial Committee as it would have if it were considering the proceedings otherwise than as a trial court.

Textual Amendments

F297 Ss. 288A-288B and preceding cross-heading inserted (20.5.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 32(2)** (with s. 126(3)-(11)); S.I. 1998/3178, art. 2(2), **Sch. 4**

VALID FROM 01/12/2010

I F298 Dockets and charges in sex cases

Textual Amendments

F298 Ss. 288BA-288BC inserted (1.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 63**, 206(1); S.S.I. 2010/357, **art. 2(b)**

288BA Dockets for charges of sexual offences

(1) An indictment or a complaint may include a docket which specifies any act or omission that is connected with a sexual offence charged in the indictment or complaint.

(2) Here, an act or omission is connected with such an offence charged if it—

(a) is specifiable by way of reference to a sexual offence, and

(b) relates to—

(i) the same event as the offence charged, or

(ii) a series of events of which that offence is also part.

(3) The docket is to be in the form of a note apart from the offence charged.

(4) It does not matter whether the act or omission, if it were instead charged as an offence, could not competently be dealt with by the court (including as particularly constituted) in which the indictment or complaint is proceeding.

(5) Where under subsection (1) a docket is included in an indictment or a complaint, it is to be presumed that—

(a) the accused person has been given fair notice of the prosecutor's intention to lead evidence of the act or omission specified in the docket, and

(b) evidence of the act or omission is admissible as relevant.

(6) The references in this section to a sexual offence are to—

(a) an offence under the Sexual Offences (Scotland) Act 2009,

(b) any other offence involving a significant sexual element.

288BB Mixed charges for sexual offences

(1) An indictment or a complaint may include a charge that is framed as mentioned in subsection (2) or (3) (or both).

(2) That is, framed so as to comprise (in a combined form) the specification of more than one sexual offence.

(3) That is, framed so as to—

(a) specify, in addition to a sexual offence, any other act or omission, and

(b) do so in any manner except by way of reference to a statutory offence.

(4) Where a charge in an indictment or a complaint is framed as mentioned in subsection (2) or (3) (or both), the charge is to be regarded as being a single yet cumulative charge.

(5) The references in this section to a sexual offence are to an offence under the Sexual Offences (Scotland) Act 2009.

288BC Aggravation by intent to rape

(1) Subsection (2) applies as respects a qualifying offence charged in an indictment or a complaint.

(2) Any specification in the charge that the offence is with intent to rape (however construed) may be given by referring to the statutory offence of rape.

(3) In this section—

(a) the reference to a qualifying offence is to an offence of assault or abduction (and includes attempt, conspiracy or incitement to commit such an offence),

(b) the reference to the statutory offence of rape is (as the case may be) to—

(i) the offence of rape under section 1 of the Sexual Offences (Scotland) Act 2009, or

(ii) the offence of rape of a young child under section 18 of that Act.**]**

VALID FROM 01/11/2002

[F299 Trials for sexual offences

Textual Amendments

F299 S. 288C and cross-heading inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), **s. 1**; S.S.I. 2002/443, **art. 3** (with art. 4(1)(2))

288C Prohibition of personal conduct of defence in cases of certain sexual offences

(1) An accused charged with a sexual offence to which this section applies is prohibited from conducting his defence in person at the trial.

(2) This section applies to the following sexual offences—

(a) rape;

(b) sodomy;

(c) clandestine injury to women;

(d) abduction of a woman or girl with intent to rape;

(e) assault with intent to rape;

(f) indecent assault;

(g) indecent behaviour (including any lewd, indecent or libidinous practice or behaviour);

(h) an offence under section 106(1)(a) or 107 of the Mental Health (Scotland) Act 1984 (c.36)(unlawful sexual intercourse with mentally handicapped female or with patient);

(i) an offence under any of the following provisions of the Criminal Law (Consolidation)(Scotland) Act 1995 (c.39)—

(i) sections 1 to 3 (incest and related offences);

(ii) section 5 (unlawful sexual intercourse with girl under 13 or 16);

(iii) section 6 (indecent behaviour toward girl between 12 and 16);

(iv) section 7(2) and (3)(procuring by threats etc.);

(v) section 8 (abduction and unlawful detention);

(vi) section 10 (seduction, prostitution, etc. of girl under 16);

(vii) section 13(5)(b) or (c)(homosexual offences);

(j) attempting to commit any of the offences set out in paragraphs (a) to (i) above.

(3) This section applies also to an offence in respect of which a court having jurisdiction to try that offence has made an order under subsection (4) below.

(4) Where, in the case of any offence, other than one set out in subsection (2) above, that court is satisfied that there appears to be such a substantial sexual element in the alleged commission of the offence that it ought to be treated, for the purposes of this section, in the same way as an offence set out in that subsection, the court shall, either on the application of the prosecutor or *ex proprio motu*, make an order under this subsection.

(5) The making of such an order does not affect the validity of anything which—

(a) was done in relation to the alleged offence to which the order relates; and

(b) was done before the order was made.

(6) The Scottish Ministers may by order made by statutory instrument vary the sexual offences to which this section applies by virtue of subsection (2) above by modifying that subsection.

(7) No such statutory instrument shall be made, however, unless a draft of it has been laid before and approved by resolution of the Scottish Parliament.

[F300 288D Appointment of solicitor by court in such cases]

(1) This section applies in the case of proceedings in respect of a sexual offence to which section 288C above applies.

(2) Where the court ascertains that—

(a) the accused has not engaged a solicitor for the purposes of his defence at the trial; or

(b) having engaged a solicitor for those purposes, the accused has dismissed him; or

(c) the accused's solicitor has withdrawn,

then, where the court is not satisfied that the accused intends to engage a solicitor or, as the case may be, another solicitor for those purposes, it shall, at its own hand, appoint a solicitor for those purposes.

(3) A solicitor so appointed is not susceptible to dismissal by the accused or obliged to comply with any instruction by the accused to dismiss counsel.

(4) Subject to subsection (3) above, it is the duty of a solicitor so appointed—

(a) to ascertain and act upon the instructions of the accused; and

(b) where the accused gives no instructions or inadequate or perverse instructions, to act in the best interests of the accused.

(5) In all other respects, a solicitor so appointed has, and may be made subject to, the same obligations and has, and may be given, the same authority as if engaged by the accused; and any employment of and instructions given to counsel by the solicitor shall proceed and be treated accordingly.

(6) Where the court is satisfied that a solicitor so appointed is no longer able to act upon the instructions, or in the best interests, of the accused, the court may relieve that solicitor of his appointment and appoint another solicitor for the purposes of the accused's defence at the trial.

(7) The references in subsections (3) to (6) above to "a solicitor so appointed" include references to a solicitor appointed under subsection (6) above.

(8) In this section "counsel" includes a solicitor who has right of audience in the High Court of Justiciary under section 25A (rights of audience in various courts including the High Court of Justiciary) of the Solicitors (Scotland) Act 1980 (c.46).**]**

Textual Amendments

F300 S. 288D inserted (S.) (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), **s. 2(1)**; S.S.I. 2002/443, **art. 3** (with art. 4(1)(2))

VALID FROM 01/04/2005

[F301 Trials involving vulnerable witnesses

Textual Amendments

F301 Ss. 288E, 288F and preceding cross-heading inserted (1.4.2005, 1.4.2006 and 1.4.2007 for certain purposes and otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 6**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

288E Prohibition of personal conduct of defence in certain cases involving child witnesses under the age of 12

(1) In proceedings to which this section applies, the accused is prohibited from conducting

[F302(a) his case in person at or for the purposes of a preliminary hearing; and

(b)**]** his defence in person at the trial and in any victim statement proof relating to any offence to which the trial relates.

(2) This section applies to any proceedings (other than proceedings in the district court) —

(a) in respect of any offence specified in subsection (3) below, and

(b) in which a child witness who is under the age of 12 on the date of commencement of the proceedings is to give evidence at or for the purposes of the trial.

(3) The offences referred to in subsection (2)(a) above are—

(a) murder,

(b) culpable homicide,

(c) any offence which—

(i) involves an assault on, or injury or threat of injury to, any person (including any offence involving neglect or ill-treatment of, or other cruelty to, a child), but

(ii) is not an offence to which section 288C of this Act applies,

(d) abduction, and

(e) plagium.

(4) Section 288D of this Act applies in the case of proceedings to which this section applies as it applies in the case of proceedings in respect of a sexual offence to which section 288C of this Act applies.

(5) In proceedings to which this section applies, the prosecutor shall, at the same time as intimating to the accused under section 271A(13) of this Act a child witness notice in respect of a child witness referred to in subsection (2)(b) above, serve on the accused a notice under subsection (6).

(6) A notice under this subsection shall contain intimation to the accused—

[F303(za) where he is indicted to the High Court in respect of the offence, that his case at or for the purposes of the preliminary hearing may be conducted only by a lawyer,**]**

(a) that if he is tried for the offence, his defence may be conducted only by a lawyer,

(b) that it is therefore in his interests, if he has not already done so, to get the professional assistance of a solicitor, and

(c) that if he does not engage a solicitor for the purposes of **[**F304the conduct of his case at or for the purposes of the preliminary hearing (if he is indicted to the High Court in respect of the offence) or**]** his defence at the trial, the court will do so.

(7) A failure to comply with subsection (5) or (6) above does not affect the validity or lawfulness of any child witness notice or any other element of the proceedings against the accused.

(8) In subsection (1) above, "victim statement proof" means any proof ordered in relation to—

(a) a victim statement made by virtue of subsection (2) (or by virtue of that subsection and subsection (6)) of section 14 of the Criminal Justice (Scotland) Act 2003 (asp 7), or

(b) a statement made by virtue of subsection (3) of that section in relation to such a victim statement.

(9) For the purposes of subsection (2)(b) above, proceedings shall be taken to have commenced when the indictment or, as the case may be, the complaint is served on the accused.

Textual Amendments

F302 Words in s. 288E(1) inserted (1.4.2005, 1.4.2006 and 1.4.2007 for certain purposes and otherwise prosp.) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 4(3)(a)**, 27(1); S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4)

F303 S. 288E(6)(za) inserted (1.4.2005, 1.4.2006 and 1.4.2007 for certain purposes and otherwise prosp.) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 4(3)(b)(i)**, 27(1); S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4)

F304 Words in s. 288E(6)(c) inserted (1.4.2005, 1.4.2006 and 1.4.2007 for certain purposes and otherwise prosp.) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 4(3)(b)(ii)**, 27(1); S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4)

288F Power to prohibit personal conduct of defence in other cases involving vulnerable witnesses

(1) This section applies in the case of proceedings in respect of any offence, other than proceedings—

(a) in the district court,

(b) in respect of a sexual offence to which section 288C of this Act applies, or

(c) to which section 288E of this Act applies,

where a vulnerable witness is to give evidence at, or for the purposes of, the trial.

(2) If satisfied that it is in the interests of the vulnerable witness to do so, the court may—

(a) on the application of the prosecutor, or

(b) of its own motion,

make an order prohibiting the accused from conducting his defence in person at the trial and in any victim statement proof relating to any offence to which the trial relates.

(3) However, the court shall not make an order under subsection (2) above if it considers that—

(a) the order would give rise to a significant risk of prejudice to the fairness of the trial or otherwise to the interests of justice, and

(b) that risk significantly outweighs any risk of prejudice to the interests of the vulnerable witness if the order is not made.

(4) The court may make an order under subsection (2) above after, as well as before, proceedings at the trial have commenced.**]**

[[F305](4A) Where, in any proceedings in the High Court, an order is made under subsection (2) above before or at the preliminary hearing, the accused is also prohibited from conducting or, as the case may be, continuing to conduct, his case in person at or for the purposes of the preliminary hearing.**]**

(5) Section 288D of this Act applies in the case of proceedings in respect of which an order is made under this section as it applies in the case of proceedings in respect of a sexual offence to which section 288C of this Act applies.

(6) In subsection (2) above, "victim statement proof" means any proof ordered in relation to—

(a) a victim statement made by virtue of subsection (2) (or by virtue of that subsection and subsection (6)) of section 14 of the Criminal Justice (Scotland) Act 2003 (asp 7), or

(b) a statement made by virtue of subsection (3) of that section in relation to such a victim statement.

Textual Amendments

F305 S. 288F(4A) inserted (1.4.2005, 1.4.2006 and 1.4.2007 for certain purposes and otherwise prosp.) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 4(4)**, 27(1); S.S.I. 2004/405, **art. 2(2)**, Sch. 2 (with savings in arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with savings in art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4)

VALID FROM 01/07/2015

[F306 Application of vulnerable witnesses provisions to proceedings in the district court]

Textual Amendments

F306 S. 288G and preceding cross-heading inserted (prosp.) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 10**, 25

288G Application of vulnerable witnesses provisions to proceedings in the district court

(1) The Scottish Ministers may by order made by statutory instrument provide for any of sections—

(a) 271 to 271M,

(b) 288E, and

(c) 288F,

of this Act to apply, subject to such modifications (if any) as may be specified in the order, to proceedings in the district court.

(2) An order under subsection (1) may—

(a) make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,

(b) make different provision for different district courts or descriptions of district court or different proceedings or types of proceedings,

(c) modify any enactment.

(3) An order under this section shall not be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.

Treason trials

289 Procedure and evidence in trials for treason.

The procedure and rules of evidence in proceedings for treason and misprision of treason shall be the same as in proceedings according to the law of Scotland for murder.

Certain rights of accused

290 Accused's right to request identification parade.

(1) Subject to subsection (2) below, the sheriff may, on an application by an accused at any time after the accused has been charged with an offence, order that, in relation to the alleged offence, the prosecutor shall hold an identification parade in which the accused shall be one of those constituting the parade.

(2) The sheriff shall make an order in accordance with subsection (1) above only after giving the prosecutor an opportunity to be heard and only if—

(a) an identification parade, such as is mentioned in subsection (1) above, has not been held at the instance of the prosecutor;

(b) after a request by the accused, the prosecutor has refused to hold, or has unreasonably delayed holding, such an identification parade; and

(c) the sheriff considers the application under subsection (1) above to be reasonable.

291 Precognition on oath of defence witnesses.

(1) The sheriff may, on the application of an accused, grant warrant to cite any person (other than a co-accused), who is alleged to be a witness in relation to any offence of which the accused has been charged, to appear before the sheriff in chambers at such time or place as shall be specified in the citation, for precognition on oath by the accused or his solicitor in relation to that offence, if the court is satisfied that it is reasonable to require such precognition on oath in the circumstances.

(2) Any person who, having been duly cited to attend for precognition under subsection (1) above and having been given at least 48 hours notice, fails without reasonable excuse to attend shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 21 days; and the court may issue a warrant for the apprehension of the person concerned, ordering him to be brought before a sheriff for precognition on oath.

(3) Any person who, having been duly cited to attend for precognition under subsection (1) above, attends but—

(a) refuses to give information within his knowledge or to produce evidence in his possession; or

(b) prevaricates in his evidence,

shall be guilty of an offence and shall be liable to be summarily subjected forthwith to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 21 days.

Mode of trial

292 Mode of trial of certain offences.

(1) Subject to subsection (6) below, the offences mentioned (and broadly described) in Schedule 10 to this Act shall be triable only summarily.

(2) An offence created by statute shall be triable only summarily if—

(a) the enactment creating the offence or any other enactment expressly so provides (in whatever words); or

(b) subject to subsections (4) and (5)(a) below, the offence was created by an Act passed on or before 29 July 1977 (the date of passing of the [M113]Criminal Law Act 1977) and the penalty or maximum penalty in force immediately before that date, on any conviction of that offence, did not include any of the following—

(i) a fine exceeding £400;

(ii) subject to subsection (3) below, imprisonment for a period exceeding 3 months;

(iii) a fine exceeding £50 in respect of a specified quantity or number of things, or in respect of a specified period during which a continuing offence is committed.

(3) In the application of paragraph (b)(ii) of subsection (2) above, no regard shall be paid to the fact that section 5(3) of this Act permits the imposition of imprisonment for a period exceeding 3 months in certain circumstances.

(4) An offence created by statute which is triable only on indictment shall continue only to be so triable.

(5) An offence created by statute shall be triable either on indictment or summarily if—

(a) the enactment creating the offence or any other enactment expressly so provides (in whatever words); or

(b) it is an offence to which neither subsection (2) nor subsection (4) above applies.

(6) An offence which may under any enactment (including an enactment in this Act or passed after this Act) be tried only summarily, being an offence which, if it had been triable on indictment, could competently have been libelled as an additional or alternative charge in the indictment, may (the provisions of this or any other enactment notwithstanding) be so libelled, and tried accordingly.

(7) Where an offence is libelled and tried on indictment by virtue of subsection (6) above, the penalty which may be imposed for that offence in that case shall not exceed that which is competent on summary conviction.

Marginal Citations
M113 1977 c.45.

Art and part and attempt

293 Statutory offences: art and part and aiding and abetting.

(1) A person may be convicted of, and punished for, a contravention of any enactment, notwithstanding that he was guilty of such contravention as art and part only.

(2) Without prejudice to subsection (1) above or to any express provision in any enactment having the like effect to this subsection, any person who aids, abets, counsels, procures or incites any other person to commit an offence against the provisions of any enactment shall be guilty of an offence and shall be liable on conviction, unless the enactment otherwise requires, to the same punishment as might be imposed on conviction of the first-mentioned offence.

Modifications etc. (not altering text)
C114 S. 293(2) excluded (1.4.1996) by 1995 c. 40, ss. 3, 7(2), **Sch. 3 Pt. II para. 11**

294 Attempt at crime.

(1) Attempt to commit any indictable crime is itself an indictable crime.

(2) Attempt to commit any offence punishable on complaint shall itself be an offence punishable on complaint.

Legal custody

295 Legal custody.

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

Warrants

296 Warrants for search and apprehension to be signed by judge.

Any warrant for search or apprehension granted under this Act shall be signed by the judge granting it, and execution upon any such warrant may proceed either upon the warrant itself or upon an extract of the warrant issued and signed by the clerk of court.

297 Execution of warrants and service of complaints, etc.

(1) Any warrant granted by a justice may, without being backed or endorsed by any other justice, be executed throughout Scotland in the same way as it may be executed within the jurisdiction of the justice who granted it.

(2) Any complaint, warrant, or other proceeding for the purposes of any summary proceedings under this Act may without endorsation 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 the officer or by production of his written execution.

(3) 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 in like manner as any such warrant issued in Scotland.

(4) In subsection (3) above, "endorsed" means endorsed in the like manner as a process to which section 4 of the [M114]Summary Jurisdiction (Process) Act 1881 applies.

(5) The [M115]Indictable Offences Act Amendment Act 1868 shall apply in relation to the execution in Scotland of warrants issued in the Channel Islands.

Extent Information
E4 S. 297 extends to Scotland only except s. 297(3)and(4) which also extend to the Isle of Man

Marginal Citations
M114 1881 c.24.

M115 1868 c.107.

VALID FROM 10/12/2007

[F307 297A Re-execution of apprehension warrants

(1) This section applies where a person has been apprehended under a warrant (the "original warrant") granted under this Act in relation to any proceedings.

(2) If the person absconds, the person may be re-apprehended under the original warrant (and as if that warrant had not been executed to any extent).

(3) If, for any reason, it is not practicable to bring the person before the court as required under a provision of this Act applying in the case, the person is to be brought before the court as soon as practicable after the relevant reason ceases to prevail.

(4) Despite subsection (3) above, if—

(a) the original warrant was granted in solemn proceedings; and

(b) the impracticability arises because the person needs medical treatment or care,

the person may be released.

(5) A person released under subsection (4) above may be re-apprehended under the original warrant (and as if that warrant had not been executed to any extent).

(6) Subsection (3) above does not affect the operation of section 22(1B) of this Act (which relates to liberation on an undertaking of persons apprehended under warrant granted in summary proceedings).

(7) Nothing in this section prevents a court from granting a fresh warrant for the apprehension of the person.

(8) Subject to this section are—

(a) any rule of law as to bringing a person before a court in pursuance of a warrant granted on petition (as referred to in section 34 of this Act);

(b) section 102A(10) of this Act;

(c) section 135(3) (including as applying in relation to sections 22(1B) and 156) of this Act;

(d) section 90A(9) of this Act.**]**

Textual Amendments

F307 S. 297A inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 33**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

Trial judge's report

298 Trial judge's report.

(1) Without prejudice to sections 113 and 186(3)(b) of this Act, the High Court may, in relation to—

(a) an appeal under section 106(1), 108 **[**[F308], 108A**]**or 175(2) to (4) of this Act;

(b) an appeal by way of bill of suspension or advocation; or

(c) a petition to the nobile officium,

at any time before the appeal is finally determined or, as the case may be, petition finally disposed of, order the judge who presided at the trial, passed sentence or otherwise disposed of the case to provide to the Clerk of Justiciary a report in writing giving the judge's opinion on the case generally or in relation to any particular matter specified in the order.

(2) The Clerk of Justiciary shall send a copy of a report provided under subsection (1) above to the convicted person or his solicitor, the Crown Agent and, in relation to cases referred under section 124(3) of this Act, the Secretary of State.

(3) Subject to subsection (2) above, the report of the judge shall be available only to the High Court, the parties and, on such conditions as may be prescribed by Act of Adjournal, such other persons or classes of persons as may be so prescribed.

Textual Amendments

F308 Words in s. 298(1)(a) inserted (20.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(33)(a)**; S.I. 1997/2323, art. 3, **Sch.1**

VALID FROM 10/12/2007

[F309 Intimation of certain applications to the High Court

Textual Amendments

F309 S. 298A and cross-heading inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 38**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

298A Intimation of bills and of petitions to the nobile officium

(1) This subsection applies where the prosecutor requires to intimate to the respondent—

(a) a bill of advocation;

(b) a petition to the nobile officium; or

(c) an order of the High Court relating to such a bill or (as the case may be) petition.

(2) Where subsection (1) above applies, the requirement may be met by serving on the respondent or the respondent's solicitor a copy of the bill, petition or (as the case may be) order.

(3) Service under subsection (2) above may (in relation to any proceedings) be effected—

(a) on the respondent, in the same manner as citation under section 141 of this Act;

(b) on the respondent's solicitor, by post.

(4) This subsection applies where a person requires to intimate to the prosecutor—

(a) a bill of suspension or advocation;

(b) a petition to the nobile officium; or

(c) an order of the High Court relating to such a bill or (as the case may be) petition.

(5) Where subsection (4) above applies, the requirement may be met by serving on the prosecutor a copy of the bill, petition or (as the case may be) order.

(6) Service under subsection (5) above may (in relation to any proceedings) be effected by post.

(7) It is sufficient evidence that service has been effected under subsection (3) or (6) above if there is produced a written execution—

(a) in the form prescribed by Act of Adjournal or as nearly as may be in such form; and

(b) signed by the person who effected service.

(8) In relation to service effected by means of registered post or the recorded delivery service, the relevant post office receipt requires to be produced along with the execution mentioned in subsection (7) above.

(9) A party who has service effected under subsection (3) or (6) above must, as soon as practicable thereafter, lodge with the Clerk of Justiciary a copy of the execution mentioned in subsection (7) above.

(10) For the purpose of subsection (3)(a) above, section 141 of this Act is to be read with such modifications as are necessary for its application in the circumstances.

(11) This section is without prejudice to any rule of law or practice by virtue of which things of the kinds mentioned in subsections (1) and (4) above (including copies) may be intimated or served.**]**

Correction of entries

299 Correction of entries.

(1) Subject to the provisions of this section, it shall be competent to correct any entry in—

(a) the record of proceedings in a prosecution; or

(b) the extract of a sentence passed or an order of court made in such proceedings,

in so far as that entry constitutes an error of recording or is incomplete.

(2) An entry mentioned in subsection (1) above may be corrected—

(a) by the clerk of the court, at any time before either the sentence or order of the court is executed or, on appeal, the proceedings are transmitted to the Clerk of Justiciary;

(b) by the clerk of the court, under the authority of the court which passed the sentence or made the order, at any time after the execution of the sentence or order of the court but before such transmission as is mentioned in paragraph (a) above; or

(c) by the clerk of the court under the authority of the High Court in the case of a remit under subsection (4)(b) below.

(3) A correction in accordance with paragraph (b) or (c) of subsection (2) above shall be intimated to the prosecutor and to the former accused or his solicitor.

(4) Where during the course of an appeal, the High Court becomes aware of an erroneous or incomplete entry, such as is mentioned in subsection (1) above, the court—

(a) may consider and determine the appeal as if such entry were corrected; and

(b) either before or after the determination of the appeal, may remit the proceedings to the court of first instance for correction in accordance with subsection (2)(c) above.

(5) Any correction under subsections (1) and (2) above by the clerk of the court shall be authenticated by his signature and, if such correction is authorised by a court, shall record the name of the judge or judges authorising such correction and the date of such authorisation.

300 Amendment of records of conviction and sentence in summary proceedings.

(1) Without prejudice to section 299 of this Act, where, on an application in accordance with subsection (2) below, the High Court is satisfied that a record of conviction or sentence in summary proceedings inaccurately records the identity of any person, it may authorise the clerk of the court which convicted or, as the case may be, sentenced the person to correct the record.

(2) An application under subsection (1) above shall be made after the determination of the summary prosecution and may be made by any party to the summary proceedings or any other person having an interest in the correction of the alleged inaccuracy.

(3) The High Court shall order intimation of an application under subsection (1) above to such persons as it considers appropriate and shall not determine the application without affording to the parties to the summary proceedings and to any other person having an interest in the correction of the alleged inaccuracy an opportunity to be heard.

(4) The power of the High Court under this section may be exercised by a single judge of the High Court in the same manner as it may be exercised by the High Court, and subject to the same provisions.

VALID FROM 10/12/2007

I[F310 Excusal of irregularities

Textual Amendments

F310 S. 300A and cross-heading inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 40**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (subject to art. 11) (as amended by S.S.I. 2007/527)

300A Power of court to excuse procedural irregularities

(1) Any court may excuse a procedural irregularity—
- (a) of a kind described in subsection (5) below; and
- (b) which has occurred in relation to proceedings before that court,

if the conditions mentioned in subsection (4) below are met.

(2) In appeal proceedings, the High Court may excuse a procedural irregularity—
- (a) of that kind; and
- (b) which has occurred in relation to earlier proceedings in the case that is the subject of the appeal,

if those conditions are met.

(3) A court may proceed under subsection (1) or (2) above on the application of the prosecutor or an accused person (having given the other an opportunity to be heard).

(4) The conditions are that—
- (a) it appears to the court that the irregularity arose because of—
  - (i) mistake or oversight; or
  - (ii) other excusable reason; and
- (b) the court is satisfied in the circumstances of the case that it would be in the interests of justice to excuse the irregularity.

(5) A procedural irregularity is an irregularity arising at any stage of proceedings—
- (a) from—
  - (i) failure to call or discharge a diet properly;
  - (ii) improper adjournment or continuation of a case;
  - (iii) a diet being fixed for a non-sitting day;
- (b) from failure of—
  - (i) the court; or
  - (ii) the prosecutor or the accused,

  to do something within a particular period or otherwise comply with a time limit;
- (c) from failure of the prosecutor to serve properly a notice or other thing;
- (d) from failure of the accused to—
  - (i) intimate properly a preliminary objection;
  - (ii) intimate properly a plea or defence;
  - (iii) serve properly a notice or other thing;
- (e) from failure of—
  - (i) the court; or
  - (ii) the prosecutor or the accused,

  to fulfil any other procedural requirement.

(6) Subsection (1) above does not authorise a court to excuse an irregularity arising by reason of the detention in custody of an accused person for a period exceeding that fixed by this Act.

(7) Subsection (1) above does not apply in relation to any requirement as to proof including, in particular, any matter relating to—
- (a) admissibility of evidence;

(b) sufficiency of evidence; or

(c) any other evidential factor.

(8) Where a court excuses an irregularity under subsection (1) above, it may make such order as is necessary or expedient for the purpose of—

(a) restoring the proceedings as if the irregularity had never occurred;

(b) facilitating the continuation of the proceedings as if it had never occurred, for example—

(i) altering a diet;

(ii) extending any time limit;

(iii) appointing a diet for further procedure or granting an adjournment or continuation of a diet;

(c) protecting the rights of the parties.

(9) For the purposes of this section—

(a) a reference to an accused person, except the reference in subsection (6) above, includes reference to a person who has been convicted of an offence;

(b) something is done properly if it is done in accordance with a requirement of an enactment or any rule of law.

(10) In subsection (5)(a)(iii) above, a "non-sitting day" is a day on which the court is under this Act not required to sit.

(11) This section is without prejudice to any provision of this Act under which a court may—

(a) alter a diet; or

(b) extend—

(i) a period within which something requires to be done; or

(ii) any other time limit.

(12) This section is without prejudice to any rule of law by virtue of which it may be determined by a court that breach, in relation to criminal proceedings—

(a) of a requirement of an enactment; or

(b) of a rule of law,

does not render the proceedings, or anything done (or purported to have been done) for the purposes of or in connection with proceedings, invalid.**]**

Rights of audience

301 Rights of audience.

(1) Without prejudice to section 103(8) of this Act, any solicitor who has, by virtue of section 25A (rights of audience) of the [M116]Solicitors (Scotland) Act 1980, a right of audience in relation to the High Court of Justiciary shall have the same right of audience in that court as is enjoyed by an advocate.

(2) Any person who has complied with the terms of a scheme approved under section 26 of the [M117]Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (consideration of applications made under section 25) shall have such rights of audience before the High Court of Justiciary as may be specified in an Act of Adjournal made under subsection (7)(b) of that section.

Marginal Citations

M116 1980 c.46.

M117 1990 c.40.

VALID FROM 10/12/2007

I[F311] Recovery of documents

Textual Amendments

F311 S. 301A and cross-heading inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 37**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (subject to art. 10) (as amended by S.S.I. 2007/527)

301A Recovery of documents

(1) It is competent for the sheriff court to make, in connection with any criminal proceedings mentioned in subsection (2) below, the orders mentioned in subsection (3) below.

(2) The proceedings are—

(a) solemn proceedings in that sheriff court;

(b) summary proceedings—

(i) in that sheriff court;

(ii) in any JP court in that sheriff court's district.

(3) The orders are—

(a) an order granting commission and diligence for the recovery of documents;

(b) an order for the production of documents.

(4) An application for the purpose may not be made—

(a) in connection with solemn proceedings, until the indictment has been served on the accused or the accused has been cited under section 66(4)(b) of this Act;

(b) in connection with summary proceedings, until the accused has answered the complaint.

(5) A decision of the sheriff on an application for an order under subsection (1) above may be appealed to the High Court.

(6) In an appeal under subsection (5) above, the High Court may uphold, vary or quash the decision of the sheriff.

(7) The prosecutor is entitled to be heard in any—

(a) application for an order under subsection (1) above;

(b) appeal under subsection (5) above,

even if the prosecutor is not a party to the application or (as the case may be) appeal.

(8) The competence of the High Court to make, in connection with criminal proceedings, the orders mentioned in subsection (3) above is restricted to making them in connection with proceedings in that court.**]**

Modifications etc. (not altering text)

C115 S. 301A(2)(b)(ii) applied (10.12.2007) by The District Courts and Justices of the Peace (Scotland) Order 2007 (S.S.I. 2007/480), **art. 4(1)(d)**

Fixed penalties

302 Fixed penalty: conditional offer by procurator fiscal.

(1) Where a procurator fiscal receives a report that a relevant offence has been committed he may send to the alleged offender a notice under this section (referred to in this section as a conditional offer); and where he issues a conditional offer the procurator fiscal shall notify the clerk of court specified in it of the issue of the conditional offer and of its terms.

(2) A conditional offer—

(a) shall give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence;

(b) shall state—

(i) the amount of the appropriate fixed penalty for that offence;

(ii) the amount of the instalments by which the penalty may be paid; and

(iii) the intervals at which such instalments should be paid;

(c) shall indicate that if, within 28 days of the date on which the conditional offer was issued, or such longer period as may be specified in the conditional offer, the alleged offender accepts the offer by making payment of the fixed penalty or of the first instalment thereof to the clerk of court specified in the conditional offer at the address therein mentioned, any liability to conviction of the offence shall be discharged;

(d) shall state that proceedings against the alleged offender shall not be commenced in respect of that offence until the end of a period of 28 days from the date on which the conditional offer was issued, or such longer period as may be specified in the conditional offer; and

(e) shall state that acceptance of the offer in the manner described in paragraph (c) above by the alleged offender shall not be a conviction nor be recorded as such.

(3) A conditional offer may be made in respect of more than one relevant offence and shall, in such a case, state the amount of the appropriate fixed penalty for all the offences in respect of which it is made.

(4) Where payment of the appropriate fixed penalty or of the first instalment has not been made to the clerk of court, he shall, upon the expiry of the period of 28 days referred to in subsection (2)(c) above or such longer period as may be specified in the conditional offer, notify the procurator fiscal who issued the conditional offer that no payment has been made.

(5) Proceedings shall not be brought against any person for the offence to which a conditional offer relates until the procurator fiscal receives notification from the clerk of court in accordance with subsection (4) above.

(6) Where an alleged offender makes payment of the appropriate fixed penalty or of the first instalment to the clerk of court specified in the conditional offer no proceedings shall be brought against the alleged offender for the offence.

(7) The Secretary of State shall, by order, prescribe a scale of fixed penalties for the purpose of this section, the amount of the maximum penalty on the scale being a sum not exceeding level 1 on the standard scale.

(8) An order under subsection (7) above—

(a) may contain provision as to the payment of fixed penalties by instalments; and

(b) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(9) In this section—

(a) "a relevant offence" means any offence in respect of which an alleged offender could competently be tried before a district court, but shall not include a fixed penalty offence within the meaning of section 51 of the [M118]Road Traffic Offenders Act 1988 nor any other offence in respect of which a conditional offer within the meaning of sections 75 to 77 of that Act may be sent; and

(b) "the appropriate fixed penalty" means such fixed penalty on the scale prescribed under subsection (7) above as the procurator fiscal thinks fit having regard to the circumstances of the case.

Marginal Citations

M118 1988 c.53.

VALID FROM 10/03/2008

[F312 302A Compensation offer by procurator fiscal

(1) Where a procurator fiscal receives a report that a relevant offence has been committed he may send to the alleged offender a notice under this section (referred to in this section as a compensation offer); and where he issues a compensation offer the procurator fiscal shall notify the clerk of court specified in it of the issue of the offer and of its terms.

(2) A compensation offer—

(a) shall give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence;

(b) shall state—

(i) the amount of compensation payable;

(ii) if the compensation is to be payable by instalments, the amount of the instalments and the intervals at which they should be paid;

(c) shall indicate that if, within 28 days of the date on which the offer was issued, or such longer period as may be specified in the offer, the alleged offender accepts the offer by making payment in respect of the offer to the clerk of court specified in the offer at the address therein mentioned, any liability to conviction of the offence shall be discharged;

(d) shall indicate—

(i) that the alleged offender may refuse the offer by giving notice to the clerk of court in the manner specified in the offer before the expiry of 28 days, or such longer period as may be specified in the offer, beginning on the day on which the offer is made;

(ii) that unless the alleged offender gives such notice, the alleged offender will be deemed to have accepted the offer (even where no payment is made in respect of the offer);

(iii) that where the alleged offender is deemed as described in sub-paragraph (ii) above to have accepted the offer any liability to conviction of the offence shall be discharged except where the offer is recalled under section 302C of this Act;

(e) shall state that proceedings against the alleged offender shall not be commenced in respect of that offence until the end of a period of 28 days from the date on which the offer was made, or such longer period as may be specified in the offer;

(f) shall state—

(i) that the acceptance of the offer in the manner described in paragraph (c) above, or deemed acceptance of the offer as described in paragraph (d)(ii) above, shall not be a conviction nor be recorded as such;

(ii) that the fact that the offer has been accepted, or deemed to have been accepted, may be disclosed to the court in any proceedings for an offence committed by the alleged offender within the period of two years beginning on the day of acceptance of the offer;

(iii) that if the offer is not accepted, that fact may be disclosed to the court in any proceedings for the offence to which the offer relates;

(g) shall state that refusal of an offer under paragraph (d)(i) above will be treated as a request by the alleged offender to be tried for the offence; and

(h) shall explain the right to request a recall of the offer under section 302C of this Act.

(3) A compensation offer may be made in respect of more than one relevant offence and shall, in such a case, state the amount payable in respect of the offer for all the offences in relation to which it is issued.

(4) The clerk of court shall—

(a) without delay, notify the procurator fiscal who issued the compensation offer when a notice as described in subsection (2)(d)(i) above has been received in respect of the offer; or

(b) following the expiry of the period of 28 days referred to in subsection (2)(c) above or such longer period as may be specified in the offer, notify the procurator fiscal if no such notice has been received.

(5) A compensation offer is accepted by the alleged offender making any payment in respect of the offer.

(6) Where an alleged offender to whom a compensation offer is made does not give notice as described in subsection (2)(d)(i) above, the alleged offender is deemed to have accepted the offer.

(7) Where—

(a) an alleged offender accepts a compensation offer as described in subsection (5) above; or

(b) an alleged offender is deemed to have accepted a compensation offer under subsection (6) above and the offer is not recalled,

no proceedings shall be brought against the alleged offender for the offence.

(8) The Scottish Ministers shall by order prescribe the maximum amount of a compensation offer; but that amount shall not exceed level 5 on the standard scale.

(9) An order under subsection (8) above shall be made by statutory instrument; and any such instrument shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(10) The alleged offender shall be presumed to have received a compensation offer under subsection (1) above if the offer is sent to—

(a) the address given by the alleged offender in a request for recall under section 302C(1) of this Act of an earlier offer in the same matter; or

(b) any address given by the alleged offender to the clerk of court specified in the offer, or to the procurator fiscal, in connection with the offer.

(11) For the purposes of section 141(4) of this Act, the accused shall be presumed to have received any citation effected at—

(a) the address to which a compensation offer under subsection (1) above was sent provided it is proved that the accused received the offer; or

(b) any address given by the accused to the clerk of court specified in the offer, or to the procurator fiscal, in connection with the offer.

(12) The clerk of court shall account for the amount paid under a compensation offer to the person entitled thereto.

(13) In this section, a "relevant offence" means any offence—

(a) in respect of which an alleged offender could be tried summarily; and

(b) on conviction of which it would be competent for the court to make a compensation order under section 249 of this Act.

Textual Amendments

F312 Ss. 302A-302C inserted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 50(2)**, 84; S.S.I. 2008/42, **art. 3**, Sch.

VALID FROM 10/03/2008

302B Combined fixed penalty and compensation offer

(1) The procurator fiscal may send to an alleged offender a notice under sections 302(1) and 302A(1) of this Act in respect of the same relevant offence (referred to in this section as a "combined offer").

(2) A combined offer shall be contained in the one notice.

(3) In addition to the information required to be provided under sections 302(2) and 302A(2) of this Act, the combined offer shall state—

(a) that the combined offer consists of both a fixed penalty offer and a compensation offer;

(b) the whole amount of the combined offer; and

(c) that liability to conviction of the offence shall not be discharged unless the whole of the combined offer is accepted.

(4) Any acceptance or deemed acceptance of part of a combined offer shall be treated as applying to the whole of the offer.

Textual Amendments

F312 Ss. 302A-302C inserted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 50(2)**, 84; S.S.I. 2008/42, **art. 3**, Sch.

VALID FROM 10/03/2008

302C Recall of fixed penalty or compensation offer

(1) Where an alleged offender is deemed to have accepted—

(a) a fixed penalty offer by virtue of section 302(2)(ca)(ii) of this Act; or

(b) a compensation offer by virtue of section 302A(2)(d)(ii) of this Act,

the alleged offender may request that it be recalled.

(2) A request for recall under subsection (1) above is valid only if—

(a) the alleged offender claims that he—

(i) did not receive the offer concerned; and

(ii) would (if he had received it) have refused the offer; or

(b) the alleged offender claims that—

(i) although he received the offer concerned, it was not practicable by reason of exceptional circumstances for him to give notice of refusal of the offer; and

(ii) he would (but for those circumstances) have refused the offer.

(3) A request for recall of a fixed penalty offer or a compensation offer requires to be made—

(a) to the clerk of court referred to in the offer; and

(b) no later than 7 days after the expiry of the period specified in the offer for payment of the fixed penalty or compensation offer or, where a notice is sent in pursuance of section 303(1A)(a) of this Act, no later than 7 days after it is sent.

(4) The clerk of court may, on cause shown by reference to subsection (2) above, consider a request for recall of such an offer despite its being made outwith the time limit applying by virtue of subsection (3)(b) above.

(5) The clerk of court may, following receipt of such a request—
(a) uphold the fixed penalty offer or compensation offer; or
(b) recall it.

(6) The alleged offender may, within 7 days of a decision under subsection (5)(a) above, apply to the court specified in the offer for a review of the decision (including as it involves a question which arose by reference to subsections (2) to (4) above).

(7) In a review under subsection (6) above, the court may—
(a) confirm or quash the decision of the clerk;
(b) in either case, give such direction to the clerk as the court considers appropriate.

(8) The decision of the court in a review under subsection (6) above shall be final.

(9) The clerk of court shall, without delay, notify the procurator fiscal of—
(a) a request for recall under subsection (1) above;
(b) an application for review under subsection (6) above;
(c) any decision under subsection (5) or (7) above.

(10) For the purposes of this section, a certificate given by the procurator fiscal as to the date on which a fixed penalty offer or compensation order was sent shall be sufficient evidence of that fact.**]**

Textual Amendments

F312 Ss. 302A-302C inserted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 50(2)**, 84; S.S.I. 2008/42, **art. 3**, Sch.

303 Fixed penalty: enforcement.

(1) Subject to subsection (2) below, where an alleged offender accepts a conditional offer by paying the first instalment of the appropriate fixed penalty, any amount of the penalty which is outstanding at any time shall be treated as if the penalty were a fine imposed by the court, the clerk of which is specified in the conditional offer.

(2) In the enforcement of a penalty which is to be treated as a fine in pursuance of subsection (1) above—
(a) any reference, howsoever expressed, in any enactment whether passed or made before or after the coming into force of this section to—
(i) the imposition of imprisonment or detention in default of payment of a fine shall be construed as a reference to enforcement by means of civil diligence;

(ii) the finding or order of the court imposing the fine shall be construed as a reference to a certificate given in pursuance of subsection (3) below;

(iii) the offender shall be construed as a reference to the alleged offender;

(iv) the conviction of the offender shall be construed as a reference to the acceptance of the conditional offer by the alleged offender;

(b) the following sections of this Act shall not apply—

section 211(7)
section 213(2);
section 214(1) to (6);
section 216(7);
section 219, except subsection (1)(b);
section 220;
section 221(2) to (4);
section 222(8); and
section 224.

(3) For the purposes of any proceedings in connection with, or steps taken for, the enforcement of any amount of a fixed penalty which is outstanding, a document purporting to be a certificate signed by the clerk of court for the time being responsible for the collection or enforcement of the penalty as to any mater relating to the penalty shall be conclusive of the matter so certified.

(4) The Secretary of State may, by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, make such provision as he considers necessary for the enforcement in England and Wales or Northern Ireland of any penalty, treated in pursuance of subsection (1) above as a fine, which is transferred as a fine to a court in England and Wales or, as the case may be, Northern Ireland.

Extent Information
E5 S. 303(4) extends to UK.

VALID FROM 02/06/2008

[F313 303ZA Work orders

(1) Where a procurator fiscal receives a report that a relevant offence has been committed he may send the alleged offender a notice under this section (referred to in this section as a work offer) which offers the alleged offender the opportunity of performing unpaid work.

(2) The total number of hours of unpaid work shall be not less than 10 nor more than 50.

(3) A work offer—

(a) shall give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence;

(b) shall state—

(i) the number of hours of unpaid work which the alleged offender is required to perform;

(ii) the date by which that work requires to be completed;

(c) shall indicate that if the alleged offender—

(i) accepts the work offer; and

(ii) completes the work to the satisfaction of the supervising officer,

any liability to conviction of the offence shall be discharged;

(d) shall state that proceedings against the alleged offender shall not be commenced in respect of that offence until the end of a period of 28 days from the date on which the offer was issued, or such longer period as may be specified in the offer;

(e) shall state—

(i) that acceptance of a work offer in the manner described in subsection (5) below shall not be a conviction nor be recorded as such;

(ii) that the fact that the offer has been accepted may be disclosed to the court in any proceedings for an offence committed by the alleged offender within the period of two years beginning on the day of acceptance of the offer;

(iii) that if a work order made under subsection (6) below is not completed, that fact may be disclosed to the court in any proceedings for the offence to which the order relates.

(4) A work offer may be made in respect of more than one relevant offence and shall, in such a case, state the total amount of work requiring to be performed in respect of the offences in relation to which it is made.

(5) An alleged offender accepts a work offer by giving notice to the procurator fiscal specified in the order before the expiry of 28 days, or such longer period as may be specified in the offer, beginning on the day on which the offer is made.

(6) If (and only if) the alleged offender accepts a work offer, the procurator fiscal may make an order (referred to in this section as a work order) against the alleged offender.

(7) Notice of a work order—

(a) shall be sent to the alleged offender as soon as reasonably practicable after acceptance of the work offer; and

(b) shall contain—

(i) the information mentioned in subsection (3)(b) above; and

(ii) the name and contact details of the person who is to act as supervisor (“the supervising officer”) in relation to the alleged offender.

(8) The procurator fiscal shall notify the local authority which will be responsible for supervision of an alleged offender of the terms of any work order sent to the alleged offender.

(9) Where a work order is made, the supervising officer shall—

(a) determine the nature of the work which the alleged offender requires to perform;

(b) determine the times and places at which the alleged offender is to perform that work;

(c) give directions to the alleged offender in relation to that work;

(d) provide the procurator fiscal with such information as the procurator fiscal may require in relation to the alleged offender's conduct in connection with the requirements of the order.

(10) In giving directions under subsection (9)(c) above, a supervising officer shall, so far as practicable, avoid—

(a) any conflict with the alleged offender's religious beliefs;

(b) any interference with the times at which the alleged offender normally—

(i) works (or carries out voluntary work); or

(ii) attends an educational establishment.

(11) The supervising officer shall, on or as soon as practicable after the date referred to in subsection (3)(b)(ii) above, notify the procurator fiscal whether or not the work has been performed to the supervising officer's satisfaction.

(12) Where an alleged offender completes the work specified in the work order to the satisfaction of the supervising officer, no proceedings shall be brought against the alleged offender for the offence.

(13) The Scottish Ministers may, by regulations, make provision for the purposes of subsection (9) above (including, in particular, the kinds of activity of which the work requiring to be performed may (or may not) consist).

(14) Regulations under subsection (13) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(15) For the purposes of section 141(4) of this Act, the accused shall be presumed to have received any citation effected at—

(a) the address to which a work offer was sent provided it is proved that the accused received the offer; or

(b) any address given, in connection with the offer, by the accused to the procurator fiscal specified in the offer.

(16) In this section, a "relevant offence" means any offence in respect of which an alleged offender could be tried summarily.**]**

Textual Amendments

F313 S. 303ZA inserted (2.6.2008 for certain purposes and otherwise prosp.) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 51**, 84; S.S.I. 2008/192, **art. 3**, Sch.

VALID FROM 10/03/2008

[F314303ZB Setting aside of offers and orders

(1) Where this subsection applies, the procurator fiscal may set aside—

(a) a fixed penalty offer made under section 302(1) of this Act;

(b) a compensation offer made under section 302A(1) of this Act;

(c) a work offer made under section 303ZA(1) of this Act;

(d) a work order made under section 303ZA(6) of this Act.

(2) Subsection (1) above applies where, on the basis of information which comes to the procurator fiscal's attention after the offer or (as the case may be) order has been made, the procurator fiscal considers that the offer or (as the case may be) order should not have been made in respect of the alleged offender.

(3) The procurator fiscal may act under subsection (1)(a) to (c) above even where the offer has been accepted (including, in the case of an offer mentioned in subsection (1)(a) or (b) above, deemed to have been accepted).

(4) Where the procurator fiscal acts under subsection (1) above, the procurator fiscal shall give the alleged offender notice—

(a) of the setting aside of the offer or (as the case may be) order; and

(b) indicating that any liability of the alleged offender to conviction of the alleged offence is discharged.**]**

Textual Amendments

F314 S. 303ZB inserted (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 52**, 84; S.S.I. 2008/42, **art. 3**, Sch. (subject to arts. 4 - 6)

[F315 Transfer of rights of appeal of deceased person]

Textual Amendments

F315 S. 303A and preceding cross-heading inserted (1.8.1997 for specified purposes and otherwise 1.4.1999) by 1997 c. 48, **s. 20**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5); S.I. 1999/652, art. 2, **Sch.**(subject to savings and transitional provisions in art. 3)

303A [F316 Transfer of rights of appeal of deceased person.]

(1) Where a person convicted of an offence has died, any person may, subject to the provisions of this section, apply to the High Court for an order authorising him to institute or continue any appeal which could have been or has been instituted by the deceased.

(2) An application for an order under this section may be lodged with the Clerk of Justiciary within three months of the deceased's death or at such later time as the Court may, on cause shown, allow.

(3) Where the Commission makes a reference to the High Court under section 194B of this Act in respect of a person who is deceased, any application under this section must be made within one month of the reference.

(4) Where an application is made for an order under this section and the applicant—

(a) is an executor of the deceased; or

(b) otherwise appears to the Court to have a legitimate interest,

the Court shall make an order authorising the applicant to institute or continue any appeal which could have been instituted or continued by the deceased; and, subject to the provisions of this section, any such order may include such ancillary or supplementary provision as the Court thinks fit.

(5) The person in whose favour an order under this section is made shall from the date of the order be afforded the same rights to carry on the appeal as the deceased enjoyed at the time of his death and, in particular, where any time limit had begun to run against the deceased the person in whose favour an order has been made shall have the benefit of only that portion of the time limit which remained unexpired at the time of the death.

(6) In this section "appeal" includes any sort of application, whether at common law or under statute, for the review of any conviction, penalty or other order made in respect of the deceased in any criminal proceedings whatsoever.

Textual Amendments

F316 S. 303A and preceding cross-heading inserted (1.8.1997 for specified purposes and otherwise 1.4.1999) by 1997 c. 48, **s. 20**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5); S.I. 1999/652, art. 2, **Sch.**(subject to savings and transitional provisions in art. 3)

VALID FROM 10/12/2007

[F317 Electronic proceedings

Textual Amendments

F317 S. 303B and cross-heading inserted (10.12.2007 for certain purposes and otherwise prosp.) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 41(1)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

303B Electronic summary proceedings

(1) For the purposes of section 138(1) of this Act—

(a) institution of proceedings may be effected by electronic complaint;

(b) the requirement for signing is satisfied in relation to an electronic complaint by an electronic signature;

(c) the requirement for signing may be satisfied in relation to any other complaint by an electronic signature.

(2) The references in the other provisions of this Act to a complaint include an electronic complaint unless the context otherwise requires.

(3) Where proceedings are instituted by electronic complaint, in the event of any conflict between—

(a) the principal electronic complaint kept by the clerk of court for the purposes of the proceedings; and

(b) any other document (whether in electronic or other form) purporting to be the complaint,

the principal electronic complaint prevails.

(4) The requirement in section 85(4) of this Act for signing may be satisfied by electronic signature.

(5) The requirement in section 136B(2) of this Act for signing may be satisfied by electronic signature.

(6) The requirement in section 141(3)(a) of this Act for signing may be satisfied by electronic signature.

(7) The requirement in section 159(3) of this Act for authentication by initials is satisfied in relation to an electronic complaint by authentication by electronic signature.

(8) The requirements in section 172(2) of this Act for signing by the clerk of court may be satisfied by electronic signature.

(9) The requirements in section 258(2) and (9) of this Act for signing may be satisfied in relation to summary proceedings by electronic signature.

(10) The requirement in section 299(5) of this Act for authentication by signature is satisfied in relation to—

(a) proceedings which are recorded in electronic form;

(b) any extract of sentence, or order made, which is recorded in electronic form,

by authentication by electronic signature.**]**

PART XIV

GENERAL

304 Criminal Courts Rules Council.

(1) There shall be established a body, to be known as the Criminal Courts Rules Council (in this section referred to as "the Council") which shall have the functions conferred on it by subsection (9) below.

(2) The Council shall consist of—

(a) the Lord Justice General, the Lord Justice Clerk and the Clerk of Justiciary;

(b) a further Lord Commissioner of Justiciary appointed by the Lord Justice General;

(c) the following persons appointed by the Lord Justice General after such consultation as he considers appropriate—

(i) two sheriffs;

(ii) two members of the Faculty of Advocates;

(iii) two solicitors;

(iv) one sheriff clerk; and

(v) one person appearing to him to have a knowledge of the procedures and practices of the district court;

(d) two persons appointed by the Lord Justice General after consultation with the Lord Advocate, at least one of whom must be a procurator fiscal;

(e) two persons appointed by the Lord Justice General after consultation with the Secretary of State, at least one of whom must be a person appearing to the Lord Justice General to have—

(i) a knowledge of the procedures and practices of the courts exercising criminal jurisdiction in Scotland; and

(ii) an awareness of the interests of victims of crime and of witnesses in criminal proceedings; and

(f) any persons appointed under subsection (3) below.

(3) The Lord Justice General may appoint not more than two further persons, and the Secretary of State may appoint one person, to membership of the Council.

(4) The chairman of the Council shall be the Lord Justice General or such other member of the Council, being a Lord Commissioner of Justiciary, as the Lord Justice General may nominate.

(5) The members of the Council appointed under paragraphs (b) to (f) of subsection (2) above shall, so long as they retain the respective qualifications mentioned in those paragraphs, hold office for three years and be eligible for reappointment.

(6) Any vacancy in the membership of the Council by reason of the death or demission of office, prior to the expiry of the period for which he was appointed, of a member appointed under any of paragraphs (b) to (f) of subsection (2) above shall be filled by the appointment by the Lord Justice General or, as the case may be, the Secretary of State, after such consultation as is required by the paragraph in question, of another person having the qualifications required by that paragraph, and a person so appointed shall hold office only until the expiry of that period.

(7) The Council shall meet—

(a) at intervals of not more than 12 months; and

(b) at any time when summoned by the chairman or by three members of the Council,

but shall, subject to the foregoing, have power to regulate the summoning of its meetings and the procedure at such meetings.

(8) At any meeting of the Council six members shall be a quorum.

(9) The functions of the Council shall be—

(a) to keep under general review the procedures and practices of the courts exercising criminal jurisdiction in Scotland (including any matters incidental or relating to those procedures or practices); and

(b) to consider and comment on any draft Act of Adjournal submitted to it by the High Court, which shall, in making the Act of Adjournal, take account to such extent as it considers appropriate of any comments made by the Council under this paragraph.

(10) In the discharge of its functions under subsection (9) above the Council may invite representations on any aspect of the procedures and practices of the courts exercising criminal jurisdiction in Scotland (including any matters incidental or relating to those procedures or practices) and shall consider any such representations received by it, whether or not submitted in response to such an invitation.

305 Acts of Adjournal.

(1) The High Court may by Act of Adjournal—

(a) regulate the practice and procedure in relation to criminal procedure;

(b) make such rules and regulations as may be necessary or expedient to carry out the purposes and accomplish the objects of any enactment (including an enactment in this Act) in so far as it relates to criminal procedure;

(c) subject to subsection (5) below, to fix and regulate the fees payable in connection with summary criminal proceedings; and

(d) to make provision for the application of sums paid under section 220 of this Act and for any matter incidental thereto.

(2) The High Court may by Act of Adjournal modify, amend or repeal any enactment (including an enactment in this Act) in so far as that enactment relates to matters with respect to which an Act of Adjournal may be made under subsection (1) above.

(3) No rule, regulation or provision which affects the governor or any other officer of a prison shall be made by Act of Adjournal except with the consent of the Secretary of State.

(4) The Clerk of Justiciary may, with the sanction of the Lord Justice General and the Lord Justice Clerk, vary the forms set out in an Act of Adjournal made under subsection (1) above or any other Act whether passed before or after this Act from time to time as may be found necessary for giving effect to the provisions of this Act relating to solemn procedure.

(5) Nothing in paragraph (c) of subsection (1) above shall empower the High Court to make any regulation which the Secretary of State is empowered to make by the [M119]Courts of Law Fees (Scotland) Act 1895.

Modifications etc. (not altering text)

C116 S. 305 modified (27.7.2001) by 2001 asp 7, s. 4, Sch. paras. 68, **77** (with Sch. para. 65); S.S.I. 2001/274, **art. 3(1)(b)(c)(d)**

C117 S. 305 modified (27.7.2001) by 1993 c. 9, **s. 10(2U)** (as substituted by 2001 asp 7, **s. 3(1)(b)**; S.S.I. 2001/274, **art. 3(1)(a)**)

C118 S. 305 modified (27.7.2001) by 2001 asp 7, s. 4, **Sch. para. 21** (with Sch. para. 18); S.S.I. 2001/274, **art. 3(1)(b)(c)**

Marginal Citations

M119 58 & 59 Vict. c.14.

306 Information for financial and other purposes.

(1) The Secretary of State shall in each year publish such information as he considers expedient for the purpose of—

(a) enabling persons engaged in the administration of criminal justice to become aware of the financial implications of their decisions; or

(b) facilitating the performance by such persons of their duty to avoid discriminating against any persons on the ground of race or sex or any other improper ground.

(2) Publication under subsection (1) above shall be effected in such manner as the Secretary of State considers appropriate for the purpose of bringing the information to the attention of the persons concerned.

307 Interpretation.

(1) In this Act, unless the context otherwise requires—

"appropriate court" means a court named as such in pursuance of section 228(4) of this Act or of Schedule 6 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" means release of an accused or an appellant on conditions, or conditions imposed on bail, as the context requires;

"chartered psychologist" means a person for the time being listed in the British Psychological Society's Register of Chartered Psychologists;

"child", except in section 46(3) of and Schedule 1 to this Act, has the meaning assigned to that expression for the purposes of Chapters 2 and 3 of Part II of the [M120]Children (Scotland) Act 1995;

"children's hearing" has the meaning assigned to it in Part II of the Children (Scotland) Act 1995;

"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;

"community service order" means an order made under section 238 of this Act;

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

"constable" has the same meaning as in the [M121]Police (Scotland) Act 1967;

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

"court of summary criminal jurisdiction" includes the sheriff court and district court;

"crime" means any crime or offence at common law or under any Act of Parliament whether passed before or after this Act, and includes an attempt to commit any crime or offence;

"diet" includes any continuation of a diet;

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

"examination of facts" means an examination of facts held under section 55 of this Act;

"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 lawfully issued from any court of justice of the United Kingdom as evidence of a conviction;

"fine" includes—

(a) any pecuniary penalty, (but not a pecuniary forfeiture or pecuniary compensation); and

(b) an instalment of a fine;

"governor" means, in relation to a contracted out prison within the meaning of section 106(4) of the [M122]Criminal Justice and Public Order Act 1994, the director of the prison;

"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

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 58 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;

"hospital" means—

(a) any hospital vested in the Secretary of State under the [M123]National Health Service (Scotland) Act 1978;

(aa) **[**[F318]any hospital managed by a National Health Service Trust established under section 12A of that Act;**]**

(b) any private hospital registered under Part IV of the [M124]Mental Health (Scotland) Act 1984; and

(c) any State hospital;

"hospital order" has the meaning assigned to it by section 58 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 contempt of court;

"indictment" includes any indictment whether in the sheriff court or the High Court framed in the form set out an Act of Adjournal or as nearly as may be in such form;

"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 within such commission area;

"legalised police cells" has the like meaning as in the [M125]Prisons (Scotland) Act 1989;

"local authority" has the meaning assigned to it by section 1(2) of the [M126]Social Work (Scotland) Act 1968;

"Lord Commissioner of Justiciary" includes Lord Justice General and Lord Justice Clerk;

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

"officer of law" includes, in relation to the service and execution of any warrant, citation, petition, indictment, complaint, list of witnesses, order, notice, or other proceeding or document—

(a) any macer, messenger-at-arms, sheriff officer or other person having authority to execute a warrant of the court;

(b) any constable;

(c) any person who is employed under section 9 of the [M127]Police (Scotland) Act 1967 for the assistance of the constables of a police force and who is authorised by the chief constable of that police force in relation to service and execution as mentioned above;

(d) where the person upon whom service or execution is effected is in prison at the time of service on him, any prison officer; and

(e) any person or class or persons authorised in that regard for the time being by the Lord Advocate or by the Secretary of State;

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

"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 Part II of the [M128]Children (Scotland) Act 1995;

"the prescribed sum" has the meaning given by section 225(8) of this Act;

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

"prison officer" and "officer of a prison" means, in relation to a contracted out prison within the meaning of section 106(4) of the [M129]Criminal Justice and Public Order Act 1994, a prisoner custody officer within the meaning of section 114(1) of that Act;

"probationer" means a person who is under supervision by virtue of a probation order or who was under such supervision at the time of the commission of any relevant offence or failure to comply with such order;

"probation order" has the meaning assigned to it by section 228 of this Act;

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

"procurator fiscal" means the procurator fiscal for a sheriff court district, and includes assistant procurator fiscal and procurator fiscal depute and any person duly authorised to execute the duties of the procurator fiscal;

"prosecutor"—

(a) for the purposes of proceedings other than summary proceedings, includes Crown Counsel, procurator fiscal, any other person prosecuting in the public interest and any private prosecutor; and

(b) for the purposes of summary proceedings, includes procurator fiscal, and any other person prosecuting in the public interest 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 [M130]Prisons (Scotland) Act 1989;

"residential establishment" means an establishment within the meaning of that expression for the purposes of the [M131]Social Work (Scotland) Act 1968 or, as the case may be, of Part II of the [M132]Children (Scotland) Act 1995;

"responsible medical officer" has the meaning assigned to it by section 59 of the [M133]Mental Health (Scotland) Act 1984;

"restriction order" has the meaning assigned to it by section 59 of this Act;

"sentence", whether of detention or of imprisonment, means a sentence passed in respect of a crime or offence and does not include an order for committal in default of payment of any sum of money or for contempt of court;

"sheriff clerk" includes sheriff clerk depute, and extends and applies to any person duly authorised to execute the duties of sheriff clerk;

"sheriff court district" extends 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 VIII of the Mental Health (Scotland) Act 1984;

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

"supervision requirement" has the meaning assigned to it in Part II of the Children (Scotland) Act 1995;

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

"witness" includes haver;

"young offenders institution" has the like meaning as in the [M134]Prisons (Scotland) Act 1989.

(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 [M135]Naval Discipline Act 1957, the [M136]Army Act 1955 or the [M137]Air Force Act 1955 for a civil offence within the meaning of those Acts.

(3) For the purposes of this Act, except section 228(6), 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.

(4) 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.

(5) 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 the United Kingdom and to a previous sentence passed by any such court.

(6) 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.

(7) Without prejudice to section 46 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.

(8) 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.

Textual Amendments

F318 S. 307(1): para. (aa) in definition of "hospital"

inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(34)(b)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

Marginal Citations

M120 1995 c.36.
M121 1967 c.77.
M122 1994 c.33.
M123 1978 c.29.
M124 1984 c.36.
M125 1989 c.45.
M126 1968 c.49.
M127 1967 c.77.
M128 1995 c.36.
M129 1994 c.33.
M130 1989 c.45.
M131 1968 c.49.
M132 1995 c.36.
M133 1984 c.36.
M134 1989 c.45.
M135 1957 c.53.
M136 1955 c.18.
M137 1955 c.19.

308 Construction of enactments referring to detention etc.

In any enactment—

(a) 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 under section 207 of this Act; and

(b) any reference to imprisonment as including any other form of detention shall be construed as including a reference to detention under that section.

VALID FROM 10/12/2007

[F319 308A Expressions relating to electronic proceedings

(1) In this Act, an "electronic complaint" is a complaint in electronic form which is capable of being—

(a) transmitted by means of electronic communication;

(b) kept in legible form.

(2) In this Act, unless the context otherwise requires—

"electronic communication" is to be construed in accordance with section 15(1) of the Electronic Communications Act 2000 (c. 7);

"electronic signature" is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000, but includes a version of an electronic signature which is reproduced on a paper document.

(3) The Scottish Ministers may by order modify the meaning of "electronic signature" provided for in subsection (2) above for the purpose of such provisions of this Act as are specified in the order.

(4) An order under subsection (3) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.**]**

Textual Amendments

F319 S. 308A inserted (S.) (10.12.2007 for certain purposes and otherwise prosp.) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 41(2)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

309 Short title, commencement and extent.

(1) This Act may be cited as the Criminal Procedure (Scotland) Act 1995.

(2) This Act shall come into force on 1 April 1996.

(3) Subject to subsections (4) and (5) below, this Act extends to Scotland only.

(4) The following provisions of this Act and this section extend to England and Wales—
section 44;
section 47;
section 209(3) and (7);
section 234(4) to (11);
section 244;
section 252 for the purposes of the construction mentioned in subsection (1) of that subsection;
section 303(4).

(5) The following provisions of this Act and this section extend to Northern Ireland—
section 44;
section 47;
section 244;
section 252 for the purposes of the construction mentioned in subsection (1) of that subsection;
section 303(4).

(6) Section 297(3) and (4) of this Act and this section also extend to the Isle of Man.