



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART IX

SUMMARY PROCEEDINGS

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 labelled in a complaint shall imply dismissal of the rest of the complaint.

Status: Point in time view as at 31/12/2020.

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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 [^{F1}, subject to section 275A(1) of this Act,] 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) ^{F2}.....
 - (ii) under section 270 of this Act.

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[^{F3}(9) This section, except subsection (8) above, applies in relation to the alternative disposals mentioned in subsection (10) below as it applies in relation to previous convictions.

(10) Those alternative disposals are—

- (a) a—
 - (i) fixed penalty under section 302(1) of this Act;
 - (ii) compensation offer under section 302A(1) of this Act, that has been accepted (or deemed to have been accepted) by the accused in the two years preceding the date of an offence charged;
- (b) a work order under section 303ZA(6) of this Act that has been completed in the two years preceding the date of an offence charged [^{F4};
- (c) a restoration notice given under subsection (4) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6) in respect of which the accused has given notice of intention to comply under subsection (5) of that section in the two years preceding the date of an offence charged.]

(11) Nothing in this section shall prevent the prosecutor, following conviction of an accused of an offence—

- (a) to which a fixed penalty offer made under section 302(1) of this Act related;
- (b) to which a compensation offer made under section 302A(1) of this Act related;
^{F5}
...
- (c) to which a work offer made under section 303ZA(1) of this Act related [^{F6}; or
- (d) to which a restoration notice given under section 20A(4) of the Nature Conservation (Scotland) Act 2004 (asp 6) related,]

providing the judge with information about the making of the offer (including the terms of the offer) [^{F7}or, as the case may be, about the giving of the notice (including the terms of the notice).]]

[^{F8}(12) Any reference in this section to a previous conviction includes, where relevant, a conviction by a court in any part of the United Kingdom or in any member State of the European Union.]

Textual Amendments

- F1** Words in s. 166(3) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), [s. 10\(2\)](#); S.S.I. 2002/443, [art. 3](#) (with [art. 4\(5\)](#))
- F2** S. 166(8)(b)(i) and following word repealed (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 12\(1\)](#), 84; S.S.I. 2007/479, [art. 3\(1\)](#), Sch. (as amended by S.S.I. 2007/527)
- F3** S. 166(9)-(11) added (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 53\(3\)](#), 84; S.S.I. 2008/42, [art. 3](#), Sch. (subject to [art. 6](#))
- F4** S. 166(10)(c) and semi colon inserted (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), [ss. 40\(3\)\(c\)\(i\)](#), 43(1) (with [s. 41\(1\)](#)); S.S.I. 2011/279, [art. 2\(1\)\(q\)](#)
- F5** Word in s. 166(11) repealed (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), [ss. 40\(3\)\(c\)\(ii\)\(A\)](#), 43(1) (with [s. 41\(1\)](#)); S.S.I. 2011/279, [art. 2\(1\)\(q\)](#)
- F6** S. 166(11)(d) and word inserted (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), [ss. 40\(3\)\(c\)\(ii\)\(B\)](#), 43(1) (with [s. 41\(1\)](#)); S.S.I. 2011/279, [art. 2\(1\)\(q\)](#)
- F7** Words in s. 166(11) inserted (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), [ss. 40\(3\)\(c\)\(ii\)\(C\)](#), 43(1) (with [s. 41\(1\)](#)); S.S.I. 2011/279, [art. 2\(1\)\(q\)](#)

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F8 S. 166(12) inserted (31.12.2020) by The Criminal Justice (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (S.S.I. 2020/339), regs. 1(3), **13(8)** (with reg. 16)

[^{F9}[^{F10}166A] Post-offence convictions etc.

- (1) This section applies where an accused person is convicted of an offence (“offence O”) on summary complaint.
- (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 [^{F11}, where the court considers appropriate, in any] member State of the European Union.]]

Textual Amendments

- F9** 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)
- F10** S. 166A substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#) , **ss. 70(2)** , 206(1) ; [S.S.I. 2011/178](#) , **art. 2** , sch.
- F11** Words in s. 166A(5) substituted (31.12.2020) by [The Criminal Justice \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2020 \(S.S.I. 2020/339\)](#) , regs. 1(3), **13(9)** (with reg. 16)

[^{F12}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

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- (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

F12 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) [^{F13}Subject to section 204A of this Act,] a court of summary jurisdiction may frame—
 - (a) a sentence following on conviction; or

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- (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 [^{F14}for a term] or order which, at the date of the later conviction or order, the accused is undergoing.
- [^{F15}(7A) Where the court imposes a sentence as mentioned in paragraph (a) of subsection (7) above for an offence committed after the coming into force of this subsection, 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.
- (7B) Where 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.
- (7C) In subsections (7A) and (7B) above, 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).]
- (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.

Textual Amendments

- F13** Words in s. 167(7) inserted (30.9.1998) by 1998 c. 37 , s. 119 , **Sch. 8 para. 122** ; S.I. 1998/2327 , **art. 2(1)(y)(2)(kk)** (subject to arts. 5-8)
- F14** Words in s. 167(7)(b) inserted (1.12.2003) by **Criminal Justice (Scotland) Act 2003 (asp 7)** , **ss. 26(2)(a)** , 89 ; S.S.I. 2003/475 , **art. 2** , **Sch.**
- F15** S. 167(7A)-(7C) inserted (1.12.2003) by **Criminal Justice (Scotland) Act 2003 (asp 7)** , **ss. 26(2)(b)** , 89 ; S.S.I. 2003/475 , **art. 2** , **Sch.**

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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 consignment 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.

F16

Textual Amendments

F16 S. 169 repealed (13.12.2010 in respect of offences committed on or after this date) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#) , **ss. 16(2)** , 206(1) ; S.S.I. 2010/413 , **art. 2** , Sch.

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