



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XIII U.K.

#### MISCELLANEOUS

##### *Lord Advocate*

#### 287 Demission of office by Lord Advocate. S

- (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; <sup>F1</sup> . . .

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#### Textual Amendments

- F1** Words in s. 287(6) repealed (20.5.1999) by S.I. 1999/1042, arts. 1(2)(b), 4, **Sch. 2 Pt. I para. 11**, Pt. III; S.I. 1998/3178, art. 2(2), **Sch. 4**

### 288 Intimation of proceedings in High Court to Lord Advocate. **S**

- (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.

*<sup>F2</sup> Devolution issues*

#### Textual Amendments

- F2** 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 <sup>F3</sup> Rights of appeal for Advocate General: devolution issues. **S**

- (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.

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- (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

- F3** 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**

### **<sup>F4</sup>288B Appeals to Judicial Committee of the Privy Council. S**

- (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

- F4** 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

### *<sup>F5</sup>Dockets and charges in sex cases*

#### Textual Amendments

- F5** 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 S**

- (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.

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- (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** S

- (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** S

- (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.]

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## *F<sup>6</sup>Trials for sexual offences*

### Textual Amendments

- F6** 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** **S**

- (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.

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- (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.

#### [<sup>F7</sup>288D Appointment of solicitor by court in such cases] **S**

- (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

- F7** 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\(1\)\(2\)](#))

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VALID FROM 01/04/2005

*[F<sup>8</sup>Trials involving vulnerable witnesses*

**Textual Amendments**

- F8** 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** **S**

- (1) In proceedings to which this section applies, the accused is prohibited from conducting
- [F<sup>9</sup>(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—

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- [<sup>F10</sup>(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 [<sup>F11</sup>the 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

- F9** 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)
- F10** 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)
- F11** 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 **S**

- (1) This section applies in the case of proceedings in respect of any offence, other than proceedings—
- (a) in the district court,



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- (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.]
- [<sup>F12</sup>(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

- F12** 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)

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VALID FROM 01/07/2015

*[<sup>F13</sup>Application of vulnerable witnesses provisions to proceedings in the district court]*

#### Textual Amendments

**F13** 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** **S**

- (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.** **S**

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.** **S**

- (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.

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- (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. **S**

- (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.
- [<sup>F14</sup>(4) This section does not, however, extend to the citation of the complainer for precognition by the accused in person.
- (5) In subsection (4) above, “complainer” has the same meaning as in section 274 of this Act.]

### Textual Amendments

**F14** S. 291(4)(5) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002](#) (asp 9), s. 4; S.S.I. 2002/443, [art. 3](#)

*Status: Point in time view as at 01/11/2002. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, PART XIII is up to date with all changes known to be in force on or before 18 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Mode of trial

#### 292 Mode of trial of certain offences. **S**

- (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 <sup>M1</sup>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

M1 1977 c.45.

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**Status:** Point in time view as at 01/11/2002. This version of this part contains provisions that are not valid for this point in time.  
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*Art and part and attempt*

**293 Statutory offences: art and part and aiding and abetting. S**

- (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)**

C1 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. S**

- (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. S**

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. S**

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. S**

- (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 endorsement be served or executed at any place within Scotland by any officer of law, and such service or execution may be proved either by the oath in court of the officer or by production of his written execution.

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- (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 <sup>M2</sup>Summary Jurisdiction (Process) Act 1881 applies.
- (5) The <sup>M3</sup>Indictable Offences Act Amendment Act 1868 shall apply in relation to the execution in Scotland of warrants issued in the Channel Islands.

#### Extent Information

**E1** S. 297 extends to Scotland only except s. 297(3) and (4) which also extend to the Isle of Man

#### Marginal Citations

**M2** 1881 c.24.

**M3** 1868 c.107.

VALID FROM 10/12/2007

### <sup>F15</sup>297A Re-execution of apprehension warrants **S**

- (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—

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- (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

**F15** 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. S**

- (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 <sup>[F16]</sup>, 108A] or 175(2) to (4) of this Act;
  - (b) an appeal by way of bill of suspension or advocacion; 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 <sup>[F17]</sup>Part XA of this Act, the Commission].
- (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

**F16** 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](#)

**F17** Words in s. 298(2) substituted (1.4.1999) by [1998 c. 48, s. 62\(1\)](#), [Sch. 1 para. 21\(33\)\(b\)](#); [S.I. 1999/652](#), [art. 2](#), [Sch.](#)(subject to savings and transitional provisions in art. 3)

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VALID FROM 10/12/2007

## <sup>F18</sup>Intimation of certain applications to the High Court

### Textual Amendments

**F18** 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 **S**

- (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.



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- (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. **S**

- (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. **S**

- (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

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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

### *<sup>F19</sup>Excusal of irregularities*

#### Textual Amendments

- F19** 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** **S**

- (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—

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- (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—

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- (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. S**

- (1) Without prejudice to section 103(8) of this Act, any solicitor who has, by virtue of section 25A (rights of audience) of the <sup>M4</sup>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 <sup>M5</sup>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**

**M4** 1980 c.46.

**M5** 1990 c.40.

VALID FROM 10/12/2007

### *[<sup>F20</sup>Recovery of documents*

#### **Textual Amendments**

**F20** 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 S**

- (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.

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- (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)**

- C2** 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. S**

- (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—

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- (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 <sup>M6</sup>Road Traffic

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- 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

M6 1988 c.53.

VALID FROM 10/03/2008

#### [<sup>F21</sup>302A Compensation offer by procurator fiscal **S**

- (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 subparagraph (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;

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- (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



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- (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

**F21** 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** **S**

- (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

**F21** 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.

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VALID FROM 10/03/2008

### 302C Recall of fixed penalty or compensation offer **S**

- (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.

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(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

**F21** 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. **U.K.**

- (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 matter 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

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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

**E2** S. 303(4) extends to UK.

VALID FROM 02/06/2008

### <sup>F22</sup>303Z Work orders **S**

- (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.

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- (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).

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- (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

**F22** 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

#### [<sup>F23</sup>303Z Betting aside of offers and orders **S**

- (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

**F23** 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)

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*[<sup>F24</sup> Transfer of rights of appeal of deceased person]*

**Textual Amendments**

**F24** 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** [<sup>F25</sup> **Transfer of rights of appeal of deceased person.**] **U.K.**

- (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**

**F25** 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)

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VALID FROM 10/12/2007

## [<sup>F26</sup>Electronic proceedings

### Textual Amendments

**F26** 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 **S**

- (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,



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by authentication by electronic signature.]

**Status:**

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**Changes to legislation:**

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