



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART V

#### CHILDREN AND YOUNG PERSONS

#### **46 Presumption and determination of age of child**

- (1) Where a person charged with an offence is brought before a court other than for the purpose of giving evidence, and it appears to the court that he is a child, the court shall make due enquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case, and the age presumed or declared by the court to be the age of that person shall, for the purposes of this Act or the Children and Young Persons (Scotland) Act 1937, be deemed to be the true age of that person.
- (2) The court in making any inquiry in pursuance of subsection (1) above shall have regard to the definition of child for the purposes of this Act.
- (3) Where in an indictment or complaint for—
  - (a) an offence under the Children and Young Persons (Scotland) 1937;
  - (b) any of the offences mentioned in paragraphs 3 and 4 of Schedule 1 to this Act; or
  - (c) an offence under section 1, 10(1) to (3) or 12 of the Criminal Law (Consolidation) (Scotland) Act 1995,

it is alleged that the person by or in respect of whom the offence was committed was a child or was under or had attained any specified age, and he appears to the court to have been at the date of the commission of the alleged offence a child, or to have been under or to have attained the specified age, as the case may be, he shall for the purposes of this Act or the Children and Young Persons (Scotland) Act 1937 or Part I of the Criminal Law (Consolidation) (Scotland) Act 1995 be presumed at that date to have been a child or to have been under or to have attained that age, as the case may be, unless the contrary is proved.

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*Status: This is the original version (as it was originally enacted).*

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- (4) Where, in an indictment or complaint for an offence under the Children and Young Persons (Scotland) Act 1937 or any of the offences mentioned in Schedule 1 to this Act, it is alleged that the person in respect of whom the offence was committed was a child or was a young person, it shall not be a defence to prove that the person alleged to have been a child was a young person or the person alleged to have been a young person was a child in any case where the acts constituting the alleged offence would equally have been an offence if committed in respect of a young person or child respectively.
- (5) An order or judgement of the court shall not be invalidated by any subsequent proof that—
- (a) the age of a person mentioned in subsection (1) above has not been correctly stated to the court; or
  - (b) the court was not informed that at the material time the person was subject to a supervision requirement or that his case had been referred to a children's hearing by virtue of regulations made under the Children (Scotland) Act 1995 for the purpose of giving effect to orders made in different parts of the United Kingdom.
- (6) Where it appears to the court that a person mentioned in subsection (1) above has attained the age of 17 years, he shall for the purposes of this Act or the Children and Young Persons (Scotland) Act 1937 be deemed not to be a child.
- (7) In subsection (3) above, references to a child (other than a child charged with an offence) shall be construed as references to a child under the age of 17 years; but except as aforesaid references in this section to a child shall be construed as references to a child within the meaning of section 307 of this Act.