



# Crime and Punishment (Scotland) Act 1997

## 1997 CHAPTER 48

### PART VI

#### MISCELLANEOUS AND GENERAL

##### *Miscellaneous*

#### **55 Liberation of child by police.**

- (1) Section 43 of the 1995 Act (arrangements where child arrested) shall be amended in accordance with this section.
- (2) In subsection (1), for the words from “shall”, in the second place where it occurs, to the end there shall be substituted the words—

“may liberate him—

- (a) on a written undertaking being entered into by him or his parent or guardian that he will attend at a court and at a time specified in the undertaking; or
- (b) unconditionally.”.

- (3) In subsection (6)—

- (a) for the words from “is” to “died” there shall be substituted the words “ fails to appear at the court and at the time specified in the undertaking entered into by him or on his behalf under subsection (1) above ”; and
- (b) after the word “conviction” there shall be inserted the words “ of any charge made against him at the time he was liberated under that subsection ”.

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## 56 Powers of the court on remand or committal of children and young persons.

(1) Section 51 of the 1995 Act (remand or committal of children and young persons) shall be amended in accordance with this section.

(2) In subsection (1)—

- (a) in paragraph (a), for the words “in whose area the court is situated” there shall be substituted the words “ which it considers appropriate ”;
- (b) after paragraph (a) there shall be inserted the following paragraph—
  - “(aa) if the person is over 16 years of age and subject to a supervision requirement, the court may, instead of committing him to prison, commit him to the local authority which it considers appropriate to be detained as mentioned in sub-paragraphs (i) or (ii) of paragraph (a) above;” and
- (c) in paragraph (b), after the “age”, where it first occurs, there shall be inserted the words “ to whom paragraph (aa) above does not apply ”.

<sup>F1</sup>(3) .....

(4) After subsection (4) there shall be inserted the following subsection—

“(4A) The local authority which may be appropriate in relation to a power to commit a person under paragraphs (a) or (aa) of subsection (1) or subsection (4) above may, without prejudice to the generality of those powers, be—

- (a) the local authority for the area in which the court is situated;
- (b) if the person is usually resident in Scotland, the local authority for the area in which he is usually resident;
- (c) if the person is subject to a supervision requirement, the relevant local authority within the meaning of Part II of the <sup>M1</sup>Children (Scotland) Act 1995 in relation to that requirement.”.

### Textual Amendments

**F1** S. 56(3) repealed (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [Sch. 7 para. 68](#); S.S.I. 2011/178, art. 2, Sch.

### Marginal Citations

**M1** 1995 c.36.

## 57 Precognitions.

(1) After section 67 of the 1995 Act, there shall be inserted the following section—

### “67A Failure of witness to attend for, or give evidence on, precognition.

- (1) This section applies where a prosecutor has obtained a warrant to cite a witness for precognition and has served a citation for precognition on the witness.
- (2) Where this section applies, a witness who—
  - (a) fails without reasonable excuse, after receiving at least 48 hours notice, to attend for precognition by a prosecutor at the time and place mentioned in the citation served on him; or

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(b) refuses when so cited to give information within his knowledge regarding any matter relative to the commission of the offence in relation to which such precognition is taken,  
shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to a term of imprisonment not exceeding 21 days.”.

(2) In section 140 of the 1995 Act (citation)—

- (a) in subsection (1), after the words “for” there shall be inserted the words “—  
(a) the citation of witnesses for precognition by the prosecutor, whether or not any person has been charged with the offence in relation to which the precognition is taken; and  
(b)”;  
and  
(b) subsection (3) shall cease to have effect.

## **58 Information concerning jurors.**

(1) Section 85 of the 1995 Act (citation and attendance of jurors) shall be amended as follows.

(2) In subsection (1), the words from “but” to the end shall cease to have effect.

(3) For subsection (2), there shall be substituted the following subsections—

“(2) A list of jurors shall—

- (a) contain not less than 30 names;  
(b) be prepared under the directions of the clerk of the court before which the trial is to take place;  
(c) be kept at the office of the sheriff clerk of the district in which the court of the trial diet is situated; and  
(d) be headed “List of Assize for the sitting of the High Court of Justiciary (or the sheriff court of». at»..) on the». of».”.

(2A) The clerk of the court before which the trial is take place shall, on an application made to him by or on behalf of an accused, supply the accused, free of charge, on the day on which the trial diet is called, and before the oath has been administered to the jurors for the trial of the accused, with a copy of a list of jurors prepared under subsection (2) above.

(2B) Where an accused has been supplied under subsection (2A) above with a list of jurors—

- (a) neither he nor any person acting on his behalf shall make a copy of that list, or any part thereof; and  
(b) he or his representative shall return the list to the clerk of the court after the oath has been administered to the jurors for his trial.

(2C) A person who fails to comply with subsection (2B) above shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.”.

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## 59 Certification of previous convictions in criminal proceedings.

- (1) Section 285 of the 1995 Act (proof of previous convictions) shall be amended in accordance with the following provisions of this section.
- (2) In subsection (2)—
- (a) for the words “or on behalf of the Chief Constable of Strathclyde” there shall be substituted the words “ the Secretary of State or by a person authorised by him to sign such a certificate ”;
  - (b) for the words “by the person by or on whose behalf the certificate is signed” there shall be substituted the words “ in pursuance of a service provided and maintained by the Secretary of State under or by virtue of section 36 of the <sup>M2</sup>Police (Scotland) Act 1967 or by or on behalf of the Commissioner of Police of the Metropolis ”.
- (3) In subsection (5)—
- (a) for the words “or on behalf of the Chief Constable of Strathclyde” there shall be substituted the words “ the Secretary of State or by a person authorised by him to sign such a certificate ”;
  - (b) for the words “or on behalf of the Chief Constable” there shall be substituted the words “ the Secretary of State or by a person authorised by him to sign such a certificate or by or on behalf of ”.

### Marginal Citations

M2 1967 c.77.

## 60 Grants for forensic medical services.

The Lord Advocate may out of money provided by Parliament make grants of such amount and on such conditions as he considers appropriate to any person for the provision to him by that person of forensic medical services.

## 61 Confiscation of alcohol from persons under 18.

- (1) Where a constable has reasonable grounds for suspecting that a person in a public place—
- (a) is under the age of 18; and
  - (b) is in possession of [<sup>F2</sup>alcohol], within the meaning of the <sup>M3</sup>Licensing (Scotland) Act 1976,
- he may require that person to surrender [<sup>F3</sup>the alcohol] to him, and may dispose of it in such manner as he considers appropriate; and he may also require that person to supply him with his name and address.
- (2) Where a constable has reasonable grounds for suspecting that a person of or over the age of 18 has [<sup>F4</sup>alcohol] in his possession in a public place and that that person—
- (a) has supplied such [<sup>F5</sup>alcohol] to a person under the age of 18 for consumption in a public place; or
  - (b) intends that that [<sup>F5</sup>alcohol] should be consumed in a public place by a person under the age of 18,

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the constable may require the person in possession of the [<sup>F5</sup>alcohol] to surrender it to him, and may dispose of it in such manner as he considers appropriate; and he may also require that person to supply him with his name and address.

- (3) Subject to subsection (4) below, it shall be an offence punishable on summary conviction by a fine not exceeding level 2 on the standard scale for a person to fail to comply with a requirement made under subsection (1) or (2) above.
- (4) Where a constable makes a requirement such as is mentioned in subsection (1) or (2) above he shall inform the person concerned—
  - (a) of his suspicion; and
  - (b) of the fact that failure to comply with a requirement made under either of those provisions is an offence.

<sup>F6</sup>(5) .....

- (6) In this section “public place” includes—
  - (a) any place to which the public have access for the time being (whether on payment of a fee or otherwise); and
  - (b) any place to which the public do not have access but to which the persons mentioned in subsection (1) or (2) have unlawfully gained access,but does not include licensed premises within the meaning of the Licensing (Scotland) Act [<sup>F7</sup>2005 (asp 16)].

[<sup>F8</sup>(7) In this section, “ alcohol ” has the meaning given in section 2 of the Licensing (Scotland) Act 2005 (asp 16). ]

#### Textual Amendments

- F2** Word in s. 61(1)(b) substituted (1.9.2009 at 5.00 a.m.) by Licensing (Scotland) Act 2005 (asp 16), s. 150(2), **Sch. 6 para. 8(2)(a)** (with s. 143); S.S.I. 2007/472, art. 3
- F3** Words in s. 61(1) substituted (1.9.2009 at 5.00 a.m.) by Licensing (Scotland) Act 2005 (asp 16), s. 150(2), **Sch. 6 para. 8(2)(b)** (with s. 143); S.S.I. 2007/472, art. 3
- F4** Word in s. 61(2) substituted (1.9.2009 at 5.00 a.m.) by Licensing (Scotland) Act 2005 (asp 16), s. 150(2), **Sch. 6 para. 8(3)(a)** (with s. 143); S.S.I. 2007/472, art. 3
- F5** Word in s. 61(2) substituted (1.9.2009 at 5.00 a.m.) by Licensing (Scotland) Act 2005 (asp 16), s. 150(2), **Sch. 6 para. 8(3)(b)** (with s. 143); S.S.I. 2007/472, art. 3
- F6** S. 61(5) repealed (25.1.2018) by Criminal Justice (Scotland) Act 2016 (asp 1), s. 117(2), **sch. 2 para. 14**; S.S.I. 2017/345, art. 3, sch.
- F7** Words in s. 61(6) substituted (1.9.2009 at 5.00 a.m.) by Licensing (Scotland) Act 2005 (asp 16), s. 150(2), **Sch. 6 para. 8(4)** (with s. 143); S.S.I. 2007/472, art. 3
- F8** S. 61(7) inserted (1.9.2009 at 5.00 a.m.) by Licensing (Scotland) Act 2005 (asp 16), s. 150(2), **Sch. 6 para. 8(5)** (with s. 143); S.S.I. 2007/472, art. 3

#### Marginal Citations

- M3** 1976 c.66.

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### General

#### 62 Minor and consequential amendments, and repeals.

- (1) The enactments mentioned in Schedule 1 to this Act shall have effect subject to the amendments specified therein, being minor amendments and amendments consequential upon the provisions of this Act.
- (2) The enactments mentioned in Schedule 3 to this Act are repealed to the extent specified in the third column of that Schedule.

#### Commencement Information

- II** S. 62 partly in force, s. 62 not in force at Royal Assent see s. 65(2); s. 62 in force for certain purposes at 1.8.1997 by S.I. 1997/1712, art. 3, Sch. (with arts. 4, 5); s. 62(1) in force for certain further purposes at 1.10.1997 by S.I. 1997/2323, art. 6(2); s. 62 in force for certain further purposes at 20.10.1997 by S.I. 1997/2323, art. 3, Sch. 1; s. 62(2) in force for certain further purposes at 17.11.1997 by S.I. 1997/2694, art. 2(1)(2)(c); s. 62 in force for certain further purposes at 1.1.1998 by S.I. 1997/2323, art. 4, Sch. 2; s. 62(1) in force for certain purposes at 1.1.1998 by S.I. 1997/3004, art. 2, Sch.; s. 62 in force for certain further purposes at 1.7.1998 by S.I. 1997/2323, art. 5(2); s. 62 in force for certain further purposes at 1.4.1999 by S.I. 1999/652, art. 2, Sch. (with art. 3)

#### 63 Financial provisions.

- (1) There shall be paid out of money provided by Parliament any expenses incurred—
  - (a) by the Secretary of State, under—
    - (i) section 245C(1) of the 1995 Act (remote monitoring of restriction of liberty orders) (as inserted by section 5 of this Act);
    - (ii) Part XA of the 1995 Act (Scottish Criminal Cases Review Commission) (as inserted by section 25 of this Act);
    - <sup>F9</sup>(iii) . . . . .
  - (b) by the Scottish Legal Aid Board under—
    - (i) section 28A(1) of the 1986 Act (power of Board to employ solicitors for criminal legal assistance) (as inserted by section 50 of this Act); or
    - (ii) section 33A(1) of the 1986 Act (power of Board to enter into contracts for provision of criminal legal assistance) (as inserted by section 52 of this Act); or
  - (c) by the Lord Advocate under section 60 of this Act.
- (2) There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums payable out of money so provided under any other Act.

#### Textual Amendments

- F9** S. 63(1)(a)(iii) repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), Sch. 8 Pt. 1; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

#### Commencement Information

- I2** S. 63 wholly in force at 1.1.1998; s. 63 not in force at Royal Assent see s. 65(2); s. 63(1)(a)(iii)(c)(2) in force at 1.8.1997 by S.I. 1997/1712, art. 3, Sch. (with arts. 4, 5); s. 63(1)(b) in force at 1.10.1997 by

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S.I. 1997/2323, art. 6(3); s. 63(1)(a)(i) in force at 20.10.1997 by S.I. 1997/2323, art. 3, Sch. 1; s. 63(1)(a)(ii) in force at 1.1.1998 by S.I. 1997/3004, art. 2, Sch.

## 64 Interpretation.

In this Act, unless the context otherwise requires—

“supervised release order” has the same meaning as in section 209 of the 1995 Act (supervised release orders);

“the 1984 Act” means the <sup>M4</sup>Mental Health (Scotland) Act 1984;

“the 1986 Act” means the <sup>M5</sup>Legal Aid (Scotland) Act 1986;

“the 1989 Act” means the <sup>M6</sup>Prisons (Scotland) Act 1989;

“the 1993 Act” means the <sup>M7</sup>Prisoners and Criminal Proceedings (Scotland) Act 1993;

“the 1995 Act” means the <sup>M8</sup>Criminal Procedure (Scotland) Act 1995.

### Marginal Citations

**M4** 1984 c.36.

**M5** 1986 c.47.

**M6** 1989 c.45.

**M7** 1993 c.9.

**M8** 1995 c.46.

## 65 Short title, commencement and extent.

- (1) This Act may be cited as the Crime and Punishment (Scotland) Act 1997.
- (2) This Act, except sections 45 and 46, shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be appointed for different purposes.
- (3) In an order under subsection (2) above made in respect of any provision of sections 49 to 54 of this Act, or of paragraph 12 of Schedule 1 to this Act—
  - (a) different days may be appointed for different provisions;
  - (b) different days may be appointed for different areas; and
  - (c) different provisions may be brought into force in relation to different areas.
- (4) An order under subsection (2) above may contain such transitional and consequential provisions and savings as appear to the Secretary of State to be necessary or expedient in connection with the provisions brought into force.
- (5) Subject to subsections (6) and (7) below, this Act shall extend to Scotland only.
- (6) Section 4(3) and (5) of this Act shall extend to England and Wales, and section 37(4) of this Act shall extend to England and Wales and Northern Ireland.
- (7) The amendment or repeal of any enactment by Schedules 1 or 3 to this Act shall have the same extent as the enactment so amended or, as the case may be, repealed.

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### Subordinate Legislation Made

- P1** S. 65(2) power partly exercised (10.7.1997): 1.8.1997 appointed for specified provisions by S.I. 1997/1712, art. 3, **Sch.** (with arts. 4, 5)  
S. 65(2) power partly exercised (24.9.1997): different dates appointed for specified provisions by S.I. 1997/2323, arts. 3-6, **Schs. 1-3** (with art. 7)  
S. 65(2) power partly exercised (10.11.1997): 17.11.1997 appointed for specified provisions by S.I.1997/2694, **art. 2**  
S. 65(2) power partly exercised (12.12.1997): 1.1.1998 appointed for specified provisions by S.I. 1997/3004, art. 2, **Sch.**  
S. 65(2) power partly exercised (28.2.1999): 1.4.1999 appointed for specified provisions by S.I. 1999/652, art. 2, **Sch.**

### Commencement Information

- I3** S. 65 partly in force; s. 65 not in force at Royal Assent see s. 65(2); s. 65(1)(5)(7) in force at 1.8.1997 by S.I. 1997/1712, art. 3, **Sch.** (with arts. 4, 5)



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