



Summary Jurisdiction (Scotland) Act 1954

1954 CHAPTER 48

Jurisdiction

1 Application of Act

- (1) This Act so far as relating to summary procedure shall apply to summary proceedings in respect of—
- (a) any offence which might prior to the passing of this Act, or which may under the provisions of this or any Act, whether passed before or after the passing of this Act, be tried in a summary manner;
 - (b) any offence or the recovery of a penalty under any statute which does not exclude summary procedure;
 - (c) any order *ad factum pmstandum*, or other order of court or warrant competent to a court of summary jurisdiction;
- and shall apply to procedure in all courts of summary jurisdiction in so far as they have jurisdiction in the matters aforesaid.
- (2) Where any statute provides for proceedings being taken under the Summary Procedure Act, 1864, the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, or the Summary Jurisdiction (Scotland) Act, 1908, or under any general or local Police Act, or under any public general or local Act incorporating any section of any Act hereby repealed, or for appeal under the Summary Prosecutions Appeals (Scotland) Act, 1875, such proceedings or appeal shall be taken under this Act.
- (3) Nothing in this Act shall extend to any information or complaint or other proceeding under or by virtue of any statutory provision for the recovery of any rate, tax, or impost whatsoever, or shall affect any right to sue for a penalty, or to apply for an order of court or other warrant *ad factum prestandum* in the Court of Session or sheriff court, but it shall not be competent to sue for penalties in the small debt court.

2 Application of provisions of Criminal Procedure (Scotland) Act, 1887

The provisions of sections four to fifteen, sections fifty-eight to sixty-five and sections sixty-eight and sixty-nine of the Criminal Procedure (Scotland) Act, 1887, shall, as set

out with modifications in the First Schedule to this Act, apply to proceedings under this Act.

3 Jurisdiction of inferior courts of summary jurisdiction

The jurisdiction and powers of all courts of summary jurisdiction, except in so far as the same may be altered or modified by any future Act shall remain as at the commencement of this Act and the justice of peace court and justices of the peace, and also any judge of police or burgh magistrate, shall, without prejudice to any other or wider powers conferred by statute, be entitled to exercise within their respective jurisdictions power on convicting of a common law offence—

- (a) to award imprisonment for any period not exceeding sixty days;
- (b) to impose a fine not exceeding ten pounds;
- (c) to ordain the accused (in lieu of or in addition to such imprisonment or fine) to find caution for good behaviour for any period not exceeding six months and to an amount not exceeding twenty pounds;
- (d) failing payment of such fine or on failure to find such caution, to award imprisonment in accordance with section forty-nine of this Act; provided always that in no case shall the total imprisonment exceed sixty days.

4 Certain crimes not to be tried in inferior courts of summary jurisdiction

A court of summary jurisdiction other than the sheriff court shall not have jurisdiction to try or to pronounce sentence in, but shall, to the extent and in the manner mentioned in the next succeeding section, be entitled to take cognizance of,

- (1) the case of any person found within the jurisdiction of such court, and brought before it accused or suspected of having committed at any place beyond the jurisdiction of such court any offence, or
- (2) the case of any person brought before such court accused or suspected of having committed within the jurisdiction thereof any of the following offences:—
 - (a) murder, culpable homicide, robbery, rape, wilful fire-raising, or attempt at wilful fire-raising:
 - (b) stouthrief, theft by housebreaking, or housebreaking with intent to steal:
 - (c) theft, or reset of theft, to an amount exceeding: ten pounds; or theft, or reset of theft, aggravated by two previous convictions of any offence inferring, dishonest appropriation of property, or theft by opening lockfast places:
 - (d) falsehood fraud and wilful imposition to an amount exceeding ten pounds, or falsehood fraud and wilful imposition aggravated by two previous, convictions of any offence inferring dishonest appropriation of property :
 - (e) breach of trust and embezzlement to an-amount exceeding ten pounds, or breach of trust and embezzlement aggravated by two previous convictions of any offence inferring dishonest appropriation of property:
 - (f) assault whereby any limb has been fractured, or assault with intent to ravish, or assault to the danger of life, or assault by stabbing:
 - (g) uttering forged documents or uttering forged bank or banker's notes, or offences under the Acts relating to coinage:

Provided that a, person who has been dismissed with an admonition or in whose case a probation order has been made without any sentence having been subsequently

pronounced, shall for the purposes of (this section be deemed not to have been convicted.

5 Remit to higher court or other jurisdiction

If either in the preliminary investigation or in the course of the trial of any offence it shall appear that the offence is one which cannot competently be tried in the court before which an accused is brought, or is one which, in the opinion of the court in view of the circumstances of the case, should be dealt with by a higher court, it shall be lawful for the court to commit the accused to prison for examination for any period not exceeding four days, and the prosecutor shall forthwith give notice of such committal to the procurator fiscal of the district within which such offence was committed, or to such other official as may be entitled to take cognizance thereof, in order that the accused may be dealt with according to law.

6 Boundaries of jurisdiction

- (1) An offence committed in any harbour, river, arm of the sea, or other water (tidal or other) which runs between, or forms the boundary of, the jurisdiction of two or more courts, may be tried by any one of such courts.
- (2) An offence committed on the boundary of the jurisdiction of two or more courts, or within the distance of five hundred yards of any such boundary, or partly within the jurisdiction of one court and partly within the jurisdiction of another court or courts, may be tried by any one of such courts.
- (3) Where an offence is committed on any person or in respect of any property in or upon any carriage, cart, or vehicle employed in a journey by road or railway, or on board any vessel employed in a river, lake, canal, or inland navigation, such offence may be tried by any court through whose jurisdiction such carriage, cart, vehicle, or vessel passed in the course of the journey or voyage during which the offence was committed, and, where the side, bank, centre, or other part of the road, railway, river, lake, canal, or inland navigation along which the carriage, cart, vehicle or vessel passed in the course of such journey or voyage is the boundary of the jurisdiction of two or more courts, such offence may be tried by any one of such courts.
- (4) Where several offences, which if committed in one county could be tried under one complaint, are alleged to have been committed in different counties, proceedings may be taken for all or any of those offences under one complaint before the sheriff of any one of such counties.
- (5) Where an offence is authorised by this section to be tried by any court, it may be dealt with, heard, tried, determined, 'adjudged, and punished as if the offence had been wholly committed within the jurisdiction of such court.

7 Summary powers of sheriff

- (1) The sheriff shall, without prejudice to any other or wider powers conferred by statute, have power on summarily convicting any person of a common law offence—
 - (a) to impose a fine not exceeding twenty-five pounds :
 - (b) to ordain the accused to find caution for good behaviour for any period not exceeding twelve months and to an amount not exceeding twenty-five pounds,

such caution being either in lieu of or in addition to a fine or in addition to imprisonment as hereafter in this section mentioned:

- (c) failing payment of such fine, or on failure to find such caution, to award imprisonment in accordance with section forty-nine of this Act:
 - (d) to award imprisonment, for any period not exceeding three months.
- (2) The sheriff shall have a concurrent jurisdiction with every other court within his sheriffdom in regard to all offences competent for trial in such courts.

8 In certain cases sentence of six months' imprisonment competent

Where a person is summarily convicted by the sheriff of

- (a) any offence inferring dishonest appropriation of property, or attempt thereof, aggravated by at least two previous convictions of any such offence, or
- (b) any offence inferring personal violence aggravated by at least two previous convictions of any such offence,

he may, without prejudice to any wider powers conferred by statute, be sentenced to imprisonment for any period not exceeding six months.

9 Trial of certain offences

- (1) Any offence described in any statute as a "misdemeanour " or a " crime and offence " may be tried in the sheriff court either by indictment or summarily, and, if tried summarily, the imprisonment competent on conviction shall, without prejudice to any wider powers conferred by statute, not exceed three months.
- (2) For the removal of doubt it is hereby declared that it is competent to prosecute summarily in the sheriff court the crime of uttering a forged document.

Procedure prior to Trial

10 Chief constable may, in certain cases, accept bail

- (1) Upon the apprehension of any person charged with an offence which may be competently tried before a court of summary jurisdiction other than the sheriff court, it shall be lawful for the chief constable, or other officer of police having charge in the absence of the chief constable at any police office or station, to accept bail or deposit, by a surety or by such person, that such person shall appear for trial before such court, or before the sheriff court, at some time and place to be specified, and at all subsequent diets of court, and to liberate the person so apprehended upon bail being found to an amount not exceeding twenty pounds or upon the deposit of any money or article of value to the amount of the bail fixed.
- (2) On acceptance of deposit under the last foregoing subsection the chief constable or other officer of police shall immediately enter the same in a book to be kept for the purpose, and grant an acknowledgment for the money or article so deposited, in which acknowledgment the time and place fixed for the accused's appearance shall be set forth.
- (3) The chief constable or other officer of police may refuse, in any such case as aforesaid, if he see cause, to accept bail or deposit; and such refusal, and the detention of the person so apprehended until his case is tried in the usual form, shall not subject

the chief constable or other officer of police to any claim for damages, wrongous imprisonment, or claim of any other kind whatsoever.

- (4) It shall be lawful to liberate any such person as aforesaid without bail, or to discharge him, if the chief constable or other officer deem it proper so to do.
- (5) If any person fails to appear in redemption of his bail or deposit under this section, it may be forfeited and warrant may be granted for his apprehension.

11 Appeal to High Court against refusal of bail in summary cases

- (1) Where an application for bail by a person charged with an offence on complaint under this Act is refused or where the applicant is dissatisfied with the amount of bail fixed, he may appeal to the High Court and that Court may in its discretion order intimation to the prosecutor, and where an application for bail by any such person is granted, the prosecutor, if dissatisfied with the granting of bail or with the amount fixed, may appeal in like manner and, subject as hereinafter provided, the applicant shall in such case not be liberated before such appeal is disposed of.
- (2) Notice in writing shall be immediately given by the party appealing under this section to the other party.
- (3) An appeal under this section shall be disposed of by the High Court or any Lord Commissioner of Justiciary in court or in chambers after such inquiry and hearing of the parties as shall seem just.
- (4) When an appeal is taken by the prosecutor under this section either against the grant of bail or against the amount fixed, the applicant to whom bail has been granted, shall, if the bail fixed shall have been found by him, be liberated after seventy-two hours, or where the place of application is in the Outer Hebrides or in Orkney or Zetland, ninety-six hours, from the granting of the application, whether the appeal be disposed of or not, unless the High Court shall grant order for his further detention in custody. In computing the aforesaid periods, Sundays and public holidays whether general or court holidays shall be excluded.
- (5) Notice by telegraph to the governor of the prison of the issue under the last foregoing subsection of an order within the time aforesaid bearing to be sent by the Clerk of Justiciary or the Crown Agent or, if the complaint is brought in a court other than the sheriff court, by the prosecutor shall be sufficient warrant for the detention of the applicant pending the arrival of the order in due course of post.
- (6) Where an appeal under this section by the prosecutor is refused, the High Court may award expenses against him, but no court or other fees shall be exigible from, and no expenses shall be awarded against, an applicant in respect of his application or of any appeal therein.

12 Intimation to solicitor

In any proceedings under this Act the accused, if apprehended, shall immediately on apprehension be entitled, if he so desires, to have intimation sent to a solicitor, and to have a private interview with such solicitor prior to being brought before the court.

13 Forms of procedure

- (1) The forms of procedure under this Act shall be in accordance as nearly as may be with the forms contained in the Second Schedule to this Act.
- (2) Warrants of apprehension and search shall be signed by the judge granting the same, but all other warrants, orders of court, and sentences may be signed either by the judge or by the clerk of court, and execution upon any warrant, order of court, or sentence may proceed either upon such warrant, order of court, or sentence itself or upon an extract thereof issued and signed by the clerk of court.
- (3) Where, as preliminary to any procedure, a sworn information is required, such information may be sworn to before any judge, whether the subsequent procedure be in his court or another court.

14 Incidental applications

Where prior to the presentation of a complaint it is necessary to apply to a court for any warrant or order of court as incidental to subsequent proceedings by complaint, or where a court has power to grant any warrant or order of court, although no subsequent proceedings by complaint may follow thereon, such application may be by petition at the instance of a prosecutor in the form, as nearly as may be, of the form contained in Part I of the Second Schedule to this Act, and, where necessary for the execution of any such warrant or order of court, warrant to break open lockfast places shall be implied.

15 Complaint

- (1) All proceedings under this Act for the trial of offences or recovery of penalties shall be instituted by complaint in the form as nearly as may be of the form contained in Part II of the Second Schedule to this Act.
- (2) Such complaint shall be signed by the prosecutor or by any solicitor on behalf of a prosecutor other than the public prosecutor of a court.
- (3) A solicitor may appear for and conduct any prosecution on behalf of a prosecutor other than the public prosecutor of a court.
- (4) A complaint at the instance of a private prosecutor for an offence at common law or for a statutory offence where imprisonment without the option of a fine is competent shall, unless otherwise provided in any statute, require the concurrence of the public prosecutor of the court in which the complaint is brought.
- (5) Where a complaint includes any statutory charge a notice in the form, as nearly as may be, of Form No. 1 of Part III of the Second Schedule to this Act shall be served on the accused with the complaint when he is cited to a diet, and where he is in custody the complaint and such a notice shall be served on him before he is asked to plead, and a copy of any notice so served shall, where the judge is satisfied that the charge is proved, be laid before him by the prosecutor, and shall be entered in the record of the proceedings.

16 Form of the charge in complaint

The charge in a complaint under this Act shall be stated in the form, as nearly as may be, of the appropriate form contained in Part II of the Second Schedule to this Act.

No further specification shall be required than a specification similar to that given in that form and—

- (a) the description of any offence in the words of the statute or order contravened, or in similar words, shall be sufficient;
- (b) the statement that an act was done contrary to a statute or order shall imply a statement that the statute or order applied to the circumstances existing at the time and place of the offence, that the accused was a person bound to observe the same, that any necessary preliminary procedure had been duly gone through, and that all the circumstances necessary to a contravention existed; in the case of the contravention of an order, such statement shall imply a statement that the order was duly made, confirmed, published, and generally made effectual according to the law applicable, and was in force at the time and place in question ;
- (c) where the offence is created by more than one section of one or more statutes or orders, it shall be necessary to specify only the leading section or one of the leading sections;
- (d) any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany in the same section the description of the offence in the statute or order creating the offence, may be proved by the accused, but need not be specified or negatived in the complaint, and no proof in relation to such exception, exemption, proviso, excuse, or qualification shall be required on behalf of the prosecution;
- (e) it shall be competent to include in one complaint both common law and statutory charges ;
- (f) where an offence is alleged to be committed in any special capacity, as by the holder of a licence, master of a vessel, occupier of a house, or the like, the fact that the accused possesses the qualification necessary to the commission of the offence shall, unless challenged by preliminary objection before his plea is recorded, be held as admitted ;
- (g) in any proceedings under the Merchant Shipping Acts it shall not be necessary to produce the official register of the ship referred to in the proceedings in order to prove the nationality of the ship, but the nationality of the ship as stated in the complaint shall, in the absence of evidence to the contrary, be presumed ;
- (h) in offences inferring dishonest appropriation of property brought before a court whose power to deal with such offences is limited to cases in which the value of such property does not exceed ten pounds, it shall be assumed, and it shall not be necessary to state in the charge, that the value of the property does not exceed that sum.

17 Orders of court on complaint

- (1) On any complaint under this Act being laid before a judge of the court in which the complaint is brought, he shall have power on the motion of the prosecutor—
 - (a) to pronounce an order of court assigning a diet for the disposal of the case to which the accused may be cited as after mentioned :
 - (b) to grant warrant to apprehend the accused where this appears to the judge expedient:
 - (c) to grant warrant to search the person, dwelling-house, and repositories of the accused and any place where he may be found for any documents, articles, or property likely to afford evidence of his guilt of, or guilty participation in, any

offence charged in the complaint, and to take possession of such documents, articles or property:

- (d) to grant any other order of court or warrant or interim order of court or warrant which may be competent in the circumstances.
- (2) The power under the last foregoing subsection to grant a warrant to apprehend the accused shall be exercisable notwithstanding that there is power whether at common law or under any Act to apprehend him without a warrant.
- (3) Where a diet has been fixed in a summary prosecution, it shall be competent for the court, on a joint application in writing by the parties or their solicitors, to discharge the diet so fixed and fix in lieu thereof an earlier or a later diet.

18 Citation

- (1) This Act shall be a sufficient warrant for the citation of the accused and witnesses in a summary prosecution to any ordinary sitting of the court or to any special diet fixed by the court or any adjournment thereof.
- (2) Such citation shall be in the form, as nearly as may be, of the appropriate form contained in Part IV of the Second Schedule to this Act, and shall in the case of the accused proceed on an induciae of at least forty-eight hours unless in the special circumstances of the case the court fixes a shorter induciae.
- (3) It shall be deemed a legal citation of the accused or a witness—
- (a) if the citation be delivered to him personally or left for him at his dwelling-house or place of business with some person resident or employed therein, or where he has no known dwelling-house or place of business, at any other place in which he may, at the time being, be resident, or
 - (b) where the accused or witness is the master of, or a seaman or person employed in, a vessel, if the citation is left with a person on board thereof and connected therewith, or
 - (c) where the accused is a company, association or corporation, if the citation is left at their ordinary place of business with a partner, director, secretary or other official, or if the company, association or corporation is cited in the same manner as if the proceedings were in a civil court, or
 - (d) where the accused is a body of trustees, if the citation is left with any one of them who is resident in Scotland or with their known solicitor in Scotland.
- (4) The foregoing provisions of this section as to the citation of witnesses shall apply to the citation of witnesses for precognition by the procurator fiscal or burgh prosecutor where a judge on the application of such procurator fiscal or burgh prosecutor shall deem it expedient to grant warrant to cite witnesses for precognition in regard to any offence which may be competently tried in the court of that judge, and whether or not any person has at the time of such application been charged with such offence.

19 Apprehension of witness

Where a witness after being duly cited fails to appear at the diet fixed for his attendance and no just excuse is offered on his behalf, the court may issue a warrant for his apprehension; or the court, if satisfied by evidence on oath that a witness is not likely to attend to give evidence without being compelled so to do, may issue a warrant for his apprehension in the first instance.

20 Warrants of apprehension and search

- (1) A warrant of apprehension or search may be in the form, as nearly as may be, of the appropriate form contained in Part IV of the Second Schedule to this Act, and any such warrant shall, where it is necessary for its execution, imply warrant to officers of law to break open shut and lockfast places.
- (2) A warrant of apprehension of an accused person in such form as aforesaid shall imply warrant to officers of law to search for and to apprehend the accused, and to bring him before the court issuing the warrant, or before any other court competent to deal with the case, to answer to the charge on which such warrant is granted, and, in the meantime, until he can be so brought, to detain him in a police station house, police cell, or other convenient place.
- (3) A person apprehended under any such warrant as aforesaid or by virtue of the powers possessed at common law, or conferred by statute, shall wherever practicable be brought before a court competent to deal with the case either by way of trial or by way of remit to another court not later than in the course of the first lawful day after such person shall be taken into custody, such day not being a public or local holiday.
- (4) A warrant of apprehension or other warrant shall not be required for the purpose of bringing before the court an accused person who has been apprehended without a written warrant or who attends without apprehension in answer to any charge made against him.
- (5) A warrant of apprehension of a witness in the appropriate form shall imply warrant to officers of law to search for and apprehend the witness, and to detain him in a police station house, police cell, or other convenient place, until the date fixed for the hearing of the case, unless sufficient security be found to the amount fixed in the warrant for the appearance of such witness at all diets of court

21 Adjournment for inquiry, etc.

A court of summary jurisdiction, in order to allow time for inquiry into any case, or for any other necessary cause, and without calling on the accused to plead to any charge against him, may from time to time continue the case for such reasonable time as may in the circumstances be necessary, not exceeding in all a period of seven days, or on special cause shown fourteen days, from the date of the apprehension of the accused, and may liberate him on bail or commit him to prison, either without bail or with bail to an amount fixed by the court:

Provided that no judge shall be entitled to allow bail in a case which he is not competent to try.

22 Service of complaints, etc., in and outwith Scotland

Any complaint, warrant, or other proceeding 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 such officer or by production of his written execution. Service or execution out of Scotland shall be regulated by the Indictable Offences Act, 1848, the Indictable Offences Act Amendment Act, 1868, and the Summary Jurisdiction (Process) Act, 1881, and any warrant, order of court, or process to which those Acts apply may, if duly endorsed with a view to service or execution in Scotland, be so served or executed by any officer of

law. The Indictable Offences Act, 1848, and the Indictable Offences Act Amendment Act, 1868, shall, for the purposes of this Act, apply to all offences which may be tried by the court issuing any competent warrant, order of court, or other process.

23 Limitation of time for proceedings in statutory offences

- (1) Proceedings under this Act in respect of the contravention of any statute or order shall, unless the statute or order under which the proceedings are brought fixes any other period, be commenced within six months after the contravention occurred, and, in the case of a continuous contravention, within six months after the last date of such contravention, and it shall be competent in such case in any prosecution to include the entire period during which the contravention has occurred..
- (2) For the purposes of this section proceedings shall be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted, if such warrant is executed without undue delay.

24 Public prosecutor's power to recover penalties

- (1) All penalties, for the recovery of which in Scotland no special provision has been made by statute or order, may be recovered by the public prosecutor in any court having jurisdiction.
- (2) Where a court has power to take cognisance of an offence the penalty attached to which is not defined, the punishment therefor shall be regulated by that applicable to common law offences in that court.

25 Offences by companies, etc.

With regard to the summary prosecution of offences committed by a company, association, incorporation, or body of trustees, the following provisions shall, without prejudice to any other or wider powers conferred by statute, apply:—

- (a) proceedings may be taken against the company, association, incorporation, or body of trustees, in their corporate capacity, and in that event any penalty imposed shall be recovered by civil diligence in manner hereinafter provided; or
- (b) proceedings may be taken against an individual representative of such company, association, or incorporation, as follows:—
 - (i) in the case of an ordinary company or firm, any one of the partners thereof, or the manager or the person in charge or locally in charge of the affairs thereof, may be dealt with as if he was the person offending;
 - (ii) in the case of an association, incorporation, or incorporated company, the managing director or the secretary, or other principal officer thereof, or the person in charge, or locally in charge, of the affairs thereof, may be dealt with as if he was the person offending;
 - (iii) the offence shall be deemed to be the offence of such company, association, or incorporation, and a conviction thereof may be libelled as an aggravation of any subsequent offence of the same nature by the same company, association, or incorporation, although the individuals charged and convicted are different.

Procedure at Trial

26 First diet, objections to complaint and pleas in absence of accused

(1) Where the accused is present at the first calling of the case in a summary prosecution, and

- (a) the complaint has been served on him, or
- (b) the complaint or the substance thereof has been read to him, or
- (c) he has legal assistance in his defence

he shall be asked to plead in common form, and he may, prior to pleading, state objections to the competency or relevancy of the complaint or the proceedings and no such objections shall be allowed to be stated at any future diet in the case except with the leave of the court, which may be granted only on cause shown.

(2) Objections to the competency or relevancy of a summary complaint or the proceedings thereon may, in the absence of the accused, be stated by counsel or by a solicitor on his behalf, and where such objections are so stated the provisions of this Act shall apply in like manner as if the accused had appeared and stated the objections.

(3) Where the accused is not present at a calling of the case in a summary prosecution and either

- (a) the prosecutor produces to the court written intimation that the accused pleads not guilty or pleads guilty and the court is satisfied that such written intimation has been made or authorised by the accused, or
- (b) a solicitor, or a person not being a solicitor who satisfies the court that he is authorised by the accused, appears on behalf of the accused and tenders a plea of not guilty or a plea of guilty,

then

- (i) in the case of a plea of not guilty, the provisions of this Act except paragraph (a) of section twenty-nine shall apply in like manner as if the accused had appeared and tendered the plea, and
- (ii) in the case of a plea of guilty, the court may, if the prosecutor accepts the plea, proceed to hear and dispose of the case in the absence of the accused in like manner as if he had appeared and pled guilty, or may, if it thinks fit, continue the case to another diet and require the attendance of the accused with a view to pronouncing sentence in his presence.

(4) Where in pursuance of paragraph (ii) of the last foregoing subsection the court proceeds to hear and dispose of a case in the absence of the accused, it shall not pronounce a sentence of imprisonment or of Borstal training or of detention in a detention centre, remand centre, approved school or remand home.

(5) In this section a reference to a plea of guilty shall include a reference to a plea of guilty to a part only of the charge:

Provided that where such a plea is not accepted by the prosecutor it shall be deemed to be a plea of not guilty.

(6) It shall not be competent for any person appearing to answer a complaint or for a solicitor appearing for the accused in his absence to plead want of due citation or informality therein or in the execution thereof.

27 Amendment of complaint

- (1) It shall be competent at any time prior to the determination of a summary prosecution unless the court sees just cause to the contrary to amend the complaint or any notice of penalty or previous conviction relative thereto by deletion, alteration or addition, so as to cure any error or defect therein or to meet any objection thereto, or to cure any discrepancy or variance between the complaint or notice and the evidence.
- (2) Nothing in this section shall authorise an amendment which changes the character of the offence charged, and if the court shall be of opinion that the accused may in any way be prejudiced in his defence on the merits of the case by any amendment made under this section, the court shall grant such remedy to the accused by adjournment or otherwise as it shall think just.
- (3) An amendment made under this section shall be sufficiently authenticated by the initials of the clerk of court.

28 Plea of guilty

Where the accused in a summary prosecution pleads guilty to the charge or to any part thereof, and his plea is accepted by the prosecutor, the plea shall be recorded and signed by the judge or clerk of court, and the court shall thereafter dispose of the case at the same or any adjourned diet. The plea and sentence may be combined, in which case one signature shall be sufficient to authenticate both.

29 Plea of not guilty

Where the accused in a summary prosecution pleads not guilty to the charge or guilty to part only thereof, and the prosecutor does not accept such partial plea, the following provisions shall apply:—

- (a) the court may proceed to trial at once unless either party moves for an adjournment and the court shall adjudge it expedient to grant it; or
- (b) the court may adjourn the case for trial to as early a diet as is consistent with the just interests of both parties, in which case the prosecutor shall, if requested by the accused, furnish him with a copy of the complaint if he has not already got one ;
- (c) where the accused is brought before the court by apprehension he shall be entitled to an adjournment of the case for not less than forty-eight hours, if the request for such adjournment is made before the prosecutor has commenced his proof, and the court shall inform the accused of his right to such adjournment:

Provided that the case may proceed to trial at once or on a shorter adjournment than forty-eight hours if the court considers this is necessary to secure the examination of witnesses who otherwise would not be available;

- (d) where the accused is in custody, he may be committed to prison or to legalised police cells or to any other place to which he may lawfully be committed pending trial either without bail or until he finds sufficient bail to appear at such adjourned diet and at all future diets of the case, and the amount of such bail shall be fixed in the minute of adjournment; or
- (e) the court may in any case where it shall judge it expedient, and whether or not the accused is in custody, instead of fixing bail as aforesaid, appoint the

accused to attend at such adjourned diet under a penalty, not exceeding ten pounds, in case he shall fail to appear;

- (f) the court may from time to time, and at any stage of the case, on the motion of either party, or *ex proprio motu*, grant such adjournments as may be necessary for the proper conduct of the case, and where from any cause a diet has to be continued from day to day it shall not be necessary to intimate such continuation to the accused:
- (g) it shall not be necessary for the prosecutor to establish a charge or part of a charge to which the accused pleads guilty:
- (h) the court may, in any case where it considers such a course expedient, permit any witness for the defence to be examined prior to evidence for the prosecution having been led or concluded, but in any such case the accused shall be entitled to lead additional evidence after the case for the prosecution is closed.

30 Failure of accused to appear

Where the accused in a summary prosecution fails to appear at any diet of which he has received intimation, or to which he has been cited, the following provisions shall apply:—

- (a) the court may adjourn the trial to another diet, and order the accused to attend at such diet, and appoint intimation thereof to be made to him, which intimation shall be sufficiently given by an officer of law, or by registered letter signed by the prosecutor and sent by post to the accused at his last known address, and the production in court of the written execution of such officer or of the post office receipt for such registered letter shall be sufficient evidence of such intimation having been duly given ;
- (b) where the accused is charged with any statutory offence for which a sentence of imprisonment cannot be imposed in the first instance, or where the statute founded on or conferring jurisdiction authorises procedure in the absence of the accused, the court may, on the motion of the prosecutor and upon proof that the accused has been duly cited, or has received due intimation of the diet where such intimation has been ordered, proceed to hear and dispose of the case in the absence of the accused. Unless the statute founded on authorises conviction in default of appearance, proof of the complaint must be led to the satisfaction of the court. The court in any case to which this paragraph applies may, if it shall judge it expedient, allow any solicitor who satisfies the court that he has authority from the accused so to do, to appear and plead for and defend him;
- (c) the court may grant warrant to apprehend the accused ;
- (d) the court may, on the motion of the prosecutor, forfeit any bail deposited or found for the appearance of the accused, or, where the accused has been ordered to attend under a penalty, may declare such penalty to be forfeited, and such bail or penalty may, where necessary, be recovered in the manner provided in section fifty-one of this Act, and in addition to such forfeiture the court may grant warrant to apprehend the accused.

31 Previous convictions

- (1) Where the accused in a summary prosecution has been previously convicted of any offence forming an aggravation of any offence libelled in the complaint the following provisions shall have effect:—
 - (a) a notice in the form, as nearly as may be, of Form No. 2 or Form No. 3 of Part III of the Second Schedule to this Act setting forth the previous conviction shall be served on the accused with the complaint where he is cited to a diet and where he is in custody, the complaint and such a notice shall be served on him before he is asked to plead;
 - (b) the previous conviction shall not be laid before the judge until he is satisfied that the charge is proved;
 - (c) if a plea of guilty is tendered or if, after a plea of not guilty, the accused is convicted the prosecutor shall lay the notice referred to in paragraph (d) of this subsection before the judge, and the judge or the clerk of court shall ask the accused whether he admits the previous conviction, and if such admission is made it shall be entered in the record of the proceedings;
 - (d) it shall not be necessary for the prosecutor to produce extracts of any previous convictions so admitted;
 - (e) where the accused does not admit any such previous conviction, the prosecutor unless he withdraws the conviction shall adduce evidence in proof thereof either then or at any other diet;
 - (f) a copy of any notice served on the accused under this subsection shall be entered in the record of the proceedings.
- (2) A conviction, or an extract conviction of any offence committed in any part of the United Kingdom, bearing to be under the hand of the officer in use to give out such extract conviction, shall be received in evidence without being sworn to by witnesses. An official of any prison in which the accused may have been confined on such conviction shall be a competent and sufficient witness to prove the application thereof to the accused, although such official may not have been present in court at the trial to which such conviction relates. This provision shall be without prejudice to any other competent mode of proving a conviction and the application thereof to the accused.
- (3) Where in any court a book of record is kept of the convictions in the court containing the like particulars as are inserted in an extract conviction, and where at the end of each day's proceedings the entries in such book are certified as correct by the judge or clerk of court, such entries shall, in any proceeding in that court, be accepted as evidence of such convictions.
- (4) Where the accused in a summary prosecution is convicted of any offence and also of any aggravation by previous conviction, and is again accused of any offence in regard to which such conviction may be competently used as an aggravation, the production of the prior conviction, or an extract thereof, setting forth the particulars of the previous convictions therein libelled, shall be admissible and sufficient evidence to prove against the accused all the previous convictions and aggravations therein set forth.
- (5) A previous conviction of an offence under any statute or order may be libelled as an aggravation in any subsequent charge for the same kind of offence or any analogous offence, and a conviction in any part of the United Kingdom of any offence inferring dishonesty may be libelled as an aggravation of any offence inferring dishonest appropriation of property or attempt thereat, and a conviction of any offence inferring

disorderly conduct or a "breach of public order may be libelled as an aggravation of any other offence inferring disorderly conduct or a breach of public order.

- (6) Nothing in this section shall prevent evidence of previous convictions being led in *causa* where such evidence is competent in support of a substantive charge.

32 Alibi

It shall not be competent for the accused in a summary prosecution to found on a plea of alibi, unless he gives, prior to the examination of the first witness for the prosecution, notice to the prosecutor, of the plea with particulars as to time and place and of the witnesses by whom it is proposed to prove it. The prosecutor, on such notice being given, shall be entitled, if he so desires, to an adjournment of the case.

33 Punishment of witnesses for contempt

- (1) If a witness in a summary prosecution shall wilfully fail to attend after being duly cited, or unlawfully refuse to be sworn, or after the oath has been administered to him refuse to answer any question which the court may allow, or to produce documents in his possession when required by the court, or shall prevaricate in his evidence, he shall be deemed guilty of contempt of court and be liable to be summarily punished forthwith for such contempt by a fine not exceeding three pounds or by imprisonment for any period not exceeding twenty days.
- (2) Where such punishment as aforesaid is summarily imposed, the clerk of court shall enter in the record of the proceedings the act or acts constituting the contempt or the statements forming the prevarication.
- (3) The foregoing provisions of this section shall be without prejudice to the prosecutor proceeding by way of formal complaint for any such contempt where such summary punishment, as above mentioned, is not imposed.
- (4) Any witness who, after being duly cited in accordance with section eighteen of this Act,
- (a) fails, without reasonable excuse, after receiving at least twenty-four hours' notice, to attend for precognition by a procurator fiscal or burgh prosecutor at the time and place mentioned in the citation served on him, or
 - (b) refuses when so cited to give information within his knowledge regarding any matter relative to the commission of the offence in relation to which such precognition is taken,
- shall be liable to the like punishment as is provided in the foregoing provisions of this section.

34 Administration of oath to same witness in cases at same diet

Where a witness in a summary prosecution is examined on oath in a case in which the accused is charged with an offence under any statute, and where the same witness is examined at the same diet in subsequent cases against the same or different persons accused of offences under the same statute, it shall not be necessary for the judge to administer the oath to the witness in the subsequent cases, but it shall be sufficient that the judge shall remind him in each case that he is still on oath.

35 Proof of official documents

- (1) Any letter, minute, or other official document issuing from the office or in the custody of any of the departments of state or government in the United Kingdom the production of which in evidence is required in any summary prosecution, and which according to the rules and regulations applicable to such departments may be competently produced, shall, when produced, be received as prima facie evidence of the matters contained in it without being produced or sworn to by any witness, and a copy thereof bearing to be certified by any person having authority to certify the same shall be treated as equivalent to the original, and no proof of the signature of the person certifying such copy, or of his authority to certify it, shall be necessary.
- (2) Any order by any of the departments of state or government or any local authority or public body made under powers conferred by any statute, or a print or copy of such order, shall when produced in a summary prosecution be received in evidence of the due making, confirmation, and existence of such order without being sworn to by any witness and without any further or other proof, but without prejudice to any right competent to the accused to challenge any such order as being ultra vires of the authority making it or on any other competent ground, and where any such order is referred to in the complaint it shall not be necessary to enter it in the record of the proceedings as a documentary production.
- (3) The provisions contained in this section shall be deemed to be in addition to, and not in derogation of, any powers of proving documents conferred by statute, or existing at common law.

36 Admissions by parties

- (1) It shall not be necessary in any summary prosecution, for either party to lead proof of any fact which is admitted by the opposite party, or to prove any documents the terms and application of which are not in dispute, and copies of any documents may, by agreement of the parties, be accepted as equivalent to the originals:

Provided that this subsection shall not apply unless the accused has legal assistance in his defence.

- (2) Admissions or agreements under the last foregoing subsection may be made by lodging with the clerk of court a minute signed by the person or persons making the same or by his or their counsel or solicitor, and any facts and documents so admitted or agreed shall be accepted as if they had been duly proved.

37 Judges equally divided

In a summary prosecution in a court consisting of more than one judge, if the judges are equally divided in opinion as to the guilt of the accused, the accused shall be found not guilty of the charge or part thereof on which such division of opinion exists.

38 Record

Proceedings in a summary prosecution shall be conducted summarily viva voce, and, except where otherwise provided, no record need be kept of the proceedings other than the complaint, the plea, a note of any documentary evidence produced, and the conviction and sentence or other finding of the court:

Provided that any objections taken to the competency or relevancy of the complaint or proceedings, or to the competency or admissibility of evidence, shall, if either party desires it, be entered in the record of the proceedings.

39 Proceedings written or printed

Proceedings in a summary prosecution may be either in writing or printed, or may be partly written and partly printed, and all forms bearing reference to any antecedent form may be either on the same sheet of paper therewith or on a separate sheet attached to it.

Conviction and Sentence Fines

40 Power to mitigate penalties

In a summary prosecution for the contravention of any statute or order, where such contravention involves any of the following punishments, viz., imprisonment, the imposition of a fine, the finding of caution for good behaviour or otherwise, either singly or in combination with imprisonment or fine, the court shall have in addition to any other powers conferred by Act of Parliament the following powers, viz.:—

- (a) to reduce the period of imprisonment:
- (b) to substitute a fine not exceeding twenty-five pounds for imprisonment, either with or without caution for good behaviour, not exceeding the amount and the period competent under this Act:
- (c) to substitute the finding of caution as provided for in this Act for a fine or imprisonment.
- (d) to reduce the amount of any fine:
- (e) to dispense with the finding of caution:

Provided that,

- (i) where any Act carries into effect a treaty, convention, or agreement with a foreign state, and such treaty, convention, or agreement stipulates for a fine of minimum amount the court shall not be entitled by virtue of this section to reduce the amount of such fine below that minimum amount;
- (ii) this section shall not apply to proceedings taken under any Act relating to any of Her Majesty's regular or auxiliary forces.

41 Provisions as to fines

- (1) A court of summary jurisdiction in determining the amount of any fine to be imposed on an offender shall take into consideration, amongst other things, the means of the offender so far as known to the court.
- (2) Where a court of summary jurisdiction imposes a fine on an offender, the court may order him to be searched, and any money found on him on apprehension or when so searched or when taken to prison or to a detention centre in default of payment of the fine, may, unless the court otherwise directs, be applied towards payment of the fine, and the surplus if any shall be returned to him:

Provided that the money shall not be so applied if the court is satisfied that it does not belong to the person on whom it was found or that the loss of the money will be more injurious to his family than his imprisonment or detention.

42 Time for payment of fine

- (1) A court of summary jurisdiction may allow time for the payment of any fine imposed by it on an offender or for the finding of caution by an offender, and shall allow time for payment of such fine, unless it is satisfied that the offender is possessed of sufficient means to enable him to pay the fine forthwith, or unless, on being asked by the court, whether he desires that time should be allowed for payment, he does not express any such desire or fails to satisfy the court that he has a fixed residence or unless the court is satisfied, for any other special reason, that no time should be allowed.
- (2) Where an offender on whom a fine has been imposed by a court of summary jurisdiction desires to be allowed time for payment, the court, in deciding what time shall be allowed shall consider any representation by the offender and the time allowed shall not be less than seven clear days:

Provided that, if before the expiration of the time allowed the offender surrenders himself to the court and states that he prefers immediate imprisonment to awaiting the expiration of the time allowed, the court may authorise the clerk of court to issue forthwith an extract of the finding and sentence in the form, as nearly as may be, of the appropriate form contained in Part V of the Second Schedule to this Act.

- (3) Where an offender allowed time for payment as aforesaid appears to the court to be not less than sixteen and not more than twenty-one years of age, the court may, if it thinks fit and subject to any rules made under this Act, order that the offender be placed under the supervision of such person as may be appointed by the court until the fine is paid, and in any such case, the clerk of court, before issuing an extract of the finding and sentence, shall again lay the complaint before the court and the court shall consider any report as to the conduct and means of the offender which may be made by the person under whose supervision the offender has been placed.
- (4) Where time is not allowed for payment of a fine imposed by a court of summary jurisdiction the reasons of the court shall be stated in the finding and sentence.
- (5) Where time has been allowed for payment of a fine imposed by a court of summary jurisdiction, the court may, subject to any rules made under this Act, on an application by or on behalf of the offender, and after giving the prosecutor an opportunity of being heard, allow further time for payment.

43 Payment of fine by instalments

- (1) Where a court of summary jurisdiction imposes a fine on a person convicted of an offence, the court may, either at the same or at any subsequent time, order payment of the fine by instalments of such amounts, and at such times, as it may think fit, and where any instalment is not paid by the time so ordered, the accused shall be liable to imprisonment for such period as bears to the period appropriate to the total amount of the fine the same proportion, as nearly as may be, as the sum of the unpaid instalments bears to that amount.

In this subsection the expression "period appropriate to the total amount of the fine" means the period specified by the court in default of payment of the fine or if no

such period is specified, the maximum period applicable to a fine of that amount in pursuance of section forty-nine of this Act.

- (2) In the application of section forty-five of this Act to any person imprisoned in default of payment of any instalment of a fine, the sum of the unpaid instalments shall be deemed to be the fine.

44 Transfer of jurisdiction as to person fined

- (1) Where a court of summary jurisdiction has imposed a fine on a person convicted of an offence and it appears to the court that he is resident in a place outside the jurisdiction of the court and within the jurisdiction of some other court of summary jurisdiction, the first-mentioned court may, if it appears in the circumstances expedient to do so, make with respect to such fine an order for the purposes of this section (hereinafter referred to as a "transfer of fine order").
- (2) A transfer of fine order shall specify the court within whose jurisdiction the accused is resident, and shall be in such form as may be prescribed by Act of Adjournal.
- (3) A transfer of fine order shall not be made except on the application of the person on whom the fine was imposed, and any such application may be made either in open court by that person or by a solicitor or a person, not being a solicitor, who satisfies the court that he is authorised by the accused so to do, or in writing addressed to the clerk of the court.
- (4) As from the date on which a transfer of fine order is made with respect to any fine, all functions in relation thereto which, if the order had not been made, would have been exercisable under any enactment (including this Act) by the court which imposed the fine or by the clerk of such court shall be exercisable by the court specified in the order or by the clerk thereof, as the case may be, and not otherwise:

Provided that any payment received by virtue of a transfer of fine order by the clerk of the court specified therein shall be forthwith transmitted by him to the clerk of the court which imposed the fine.

- (5) Where it appears to the court specified in a transfer of fine order that the person on whom the fine was imposed is resident in a place outside the jurisdiction of such court and within the jurisdiction of some other court of summary jurisdiction, the court so specified may make a further transfer of fine order with respect to such fine and shall cause a copy thereof to be sent to the clerk of the court which imposed the fine.
- (6) The court to be specified in a transfer of fine order shall, in any case where the fine was imposed by the sheriff court, be a sheriff court.

45 Payment of fine in part by prisoner

- (1) Where a person committed to prison for failure to pay a fine imposed by a court of summary jurisdiction pays to the governor of the prison under conditions prescribed by rules made under the Prisons (Scotland) Act, 1952, any sum in part satisfaction of the fine, the term of imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which the prisoner is sentenced as the sum so paid bears to the total amount of the fine.
- (2) In this section references to a prison and to the governor thereof shall include respectively references to legalised police cells, and to an officer in charge thereof.

- (3) Provision may be made by Act of Adjournment for the application of sums paid under this section and for any matter incidental thereto.

Imprisonment, etc.

46 Detention in precincts of court

Where a court of summary jurisdiction has power to impose imprisonment on an offender it may, in lieu of so doing, order that the offender be detained within the precincts of the court or at any police station, till such hour, not later than eight in the evening on the day on which he is convicted, as the court may direct:

Provided that before making an order under this section a court shall take into consideration the distance between the proposed place of detention and the offender's residence (if known to, or ascertainable by, the court), and shall not make any such order under this section as would deprive the offender of a reasonable opportunity of returning to his residence on the day on which the order is made.

47 Police custody in lieu of imprisonment

- (1) No person shall be sentenced to imprisonment by a court of summary jurisdiction for a period of less than five days.
- (2) Where a court of summary jurisdiction has power to impose imprisonment on an offender, it may, if any suitable place provided and certified as hereinafter mentioned is available for the purpose, sentence the offender to be detained therein, for such period not exceeding four days as the court thinks fit, and an extract of the finding and sentence shall be delivered with the offender to the person in charge of the place where the offender is to be detained and shall be a sufficient authority for his detention in that place in accordance with the sentence.
- (3) The expenses of the maintenance of offenders detained under this section shall be defrayed in like manner as the expenses of the maintenance of prisoners under the Prisons (Scotland) Act, 1952.
- (4) The Secretary of State may, on the application of any police authority, certify any police cells, or other similar places provided by the authority to be suitable places for the detention of persons sentenced to detention under this section, and may by statutory instrument make regulations for the inspection of places so provided, the treatment of persons detained therein and generally for carrying this section into effect.
- (5) No place certified under this section shall be used for the detention of females unless provision is made for their supervision by female officers.
- (6) In this section the expression " police authority " means the council of a county or of a burgh which maintains a separate police force or in the case of a county or burgh included in the area for which there is an amalgamation scheme under the Police (Scotland) Act, 1946, in force, the joint police committee.

48 Imprisonment in default of payment of fine

Where the accused in a summary prosecution is found liable in any fine the court may, whether the statute or order under which the fine is imposed does or does not provide

any method for the recovery thereof, adjudge the accused to be imprisoned in the event of failure to pay the fine, but such imprisonment shall not exceed the maximum period applicable to the fine in pursuance of section forty-nine of this Act.

49 Period of imprisonment for non-payment of fine

- (1) The maximum period of imprisonment that may be imposed in default of payment of any sum imposed by a court of summary jurisdiction as a fine or for failure to find caution shall be as follows:—

<i>Amount of sum imposed</i>	<i>Period of imprisonment</i>
Not exceeding five shillings	Five days
Exceeding five shillings but not exceeding one pound	Ten days
Exceeding one but not exceeding three pounds	Twenty days
Exceeding three but not exceeding five pounds.	Thirty days
Exceeding five but not exceeding twenty pounds	Sixty days
Exceeding twenty pounds	Three months

- (2) Where a court of summary jurisdiction in imposing any fine or sum for which caution is to be found does not specify the period of imprisonment in default of payment of such fine or on failure to find such caution, such period shall be the maximum period applicable to the non-payment of the amount imposed.
- (3) If in any sentence or extract sentence the period of imprisonment inserted in default of payment of a fine or on failure to find caution is in excess of that competent under this Act, such period of imprisonment shall be reduced to the maximum period under this Act applicable to such default or failure, and the judge who pronounced the sentence shall have power to order the sentence or extract to be corrected accordingly.
- (4) The periods of imprisonment set forth in subsection (1) of this section shall apply to the non-payment of any sum imposed as aforesaid by a court of summary jurisdiction under a statute or order passed or made before the first day of June nineteen hundred and nine, notwithstanding that that statute or order fixes any other period of imprisonment.
- (5) The provisions of this section shall be without prejudice to the operation of section forty-five of this Act.

50 Recovery by civil diligence

- (1) Where any fine falls to be recovered by civil diligence in pursuance of this Act or in any case in which a court of summary jurisdiction may think it expedient to order a fine to be recovered by civil diligence, there shall be added to the finding of the court imposing the fine the words " and decerns and ordains instant execution by arrestment and also execution to pass hereon by poinding and sale, after a charge of ten free days, " and such diligence, whatever the amount of the fine imposed, may be executed in

the same manner as if the proceedings were on an extract decree of the sheriff small debt court.

- (2) Where proceedings by civil diligence under this section are adopted imprisonment shall not thereafter be competent.

51 Caution and bail

- (1) With regard to the finding, forfeiture, and recovery of caution in any proceedings under this Act the following provisions shall apply:—

- (a) caution may be found by consignment of the amount with the clerk of court, or by bond of caution, which bond may be signed by the mark of the cautioner;
- (b) where caution becomes liable to forfeiture, forfeiture may be granted by the court on the motion of the prosecutor, and, where necessary, warrant granted for the recovery thereof;
- (c) in the event of any cautioner failing to pay the amount due under his bond within six days after he has received a charge to that effect, the court may order him to be imprisoned for the maximum period applicable in pursuance of section forty-nine of this Act to that amount or until payment is made; or the court, if it shall adjudge it expedient, may, on the application of the cautioner, grant time for payment, or may, instead of imprisonment, order recovery by civil diligence in accordance with section fifty of this Act.

- (2) Bail may be found and forfeited, and the like procedure shall be competent in default of payment thereof as is hereinbefore provided with regard to caution; and any bail found shall continue in force until the final determination of the case or until the expiry of six months from the date when such bail is found, whichever shall first occur, notwithstanding that the diets may have been from time to time continued or deserted *pro loco et tempore*, or not called:

Provided that the cautioner shall be entitled to withdraw his bond of caution at any diet of the court at which the accused appears personally.

- (3) Where, instead of being liberated on bail, the accused in a summary prosecution is liberated under a penalty in the event of his failure to appear at any future diet, and such penalty is declared to be forfeited, the amount thereof may be added to any other penalty subsequently imposed on him, or the court may pronounce a separate finding in respect of such penalty and may grant warrant for the imprisonment of the accused in the event of non-payment thereof.

52 Payment of fines

All fines and expenses imposed under this Act shall be paid to the clerk of court to be accounted for by him to the person entitled thereto, and it shall not be necessary to specify in any sentence the person entitled to payment of any such fine or expenses, unless where it is necessary to provide for the division of the penalty.

53 Expenses

The following provisions shall have effect with regard to the award of expenses in a summary prosecution:—

- (a) expenses may be awarded to or against a private prosecutor but shall not be awarded against any person prosecuting in the public interest unless the

statute or order under which the prosecution is brought expressly or impliedly authorises such an award ;

- (b) the finding regarding expenses shall be stated in the sentence or judgment disposing of the case ;
- (c) expenses awarded to the prosecutor shall be restricted to the fees set forth in the Third Schedule to this Act;
- (d) the court may award expenses against the accused without imposing any fine or may direct the expenses incurred by the prosecutor, whether public or private, to be met wholly or partly out of any fine imposed;
- (e) expenses awarded against the accused, where the fine or fines imposed do not exceed twelve pounds, shall not exceed three pounds:

Provided that if it appears to the court that the reasonable expenses of the prosecutor's witnesses together with the other expenses exceed the sum of three pounds, the court may direct the expenses of those witnesses to be paid wholly or partly out of the fine;

- (f) any expenses awarded shall be recoverable by civil diligence in accordance with section fifty of this Act.

54 Forfeiture of implements

Where a person is convicted of any offence by a court of summary jurisdiction or where a probation order is made by such a court in respect of any person, the court may order the forfeiture of any instruments or other articles found in his possession and used or calculated to be of use in the commission of the offence of which such person was convicted or on account of which the probation order was made and, save as otherwise expressly provided in any enactment with regard to the disposal of articles forfeited on conviction of an offence, may order such instruments or articles to be destroyed or otherwise disposed of.

55 Admonition

A court of summary jurisdiction may, if it appears to meet the justice of the case, dismiss with an admonition any person found guilty by the court of any offence.

56 Forms of finding and sentence

- (1) The finding and sentence and any order of a court of summary jurisdiction, as regards both offences at common law and offences under any statute or order, shall be entered in the record of the proceedings in the form as nearly as may be of the appropriate form contained in Part V of the Second Schedule to this Act, which shall be sufficient warrant for all execution thereon and for the clerk of court to issue extracts containing such executive clauses as may be necessary for implement thereof; and, when imprisonment forms part of any sentence or other judgment, warrant for the apprehension and interim detention of the accused pending his being committed to prison shall, where necessary, be implied.
- (2) Where a fine imposed by a court of summary jurisdiction is paid at the bar it shall not be necessary for the court to refer to the period of imprisonment applicable to the nonpayment thereof.

- (3) Where several charges at common law or under any statute or order are embraced in one complaint, a cumulo fine may be imposed in respect of all or any of such charges of which the accused is convicted.
- (4) A sentence following on a conviction by a court of summary jurisdiction may be framed so as to take effect on the expiry of any previous sentence which at the date of such conviction the accused is undergoing.

57 Further provision as to sentence

- (1) Every sentence imposed by a court of summary jurisdiction, shall, unless otherwise provided, be pronounced in open court in presence of the accused, but need not be written out or signed in his presence.
- (2) It shall be competent at any time before imprisonment has followed on such a sentence for the court to alter or modify it; but no higher sentence than that originally pronounced shall be competent.
- (3) The signature of the judge or clerk of court to any sentence shall be sufficient also to authenticate the findings on which such sentence proceeds.
- (4) The power conferred by subsection (2) of this section to alter or modify a sentence shall be exercisable without requiring the attendance of the accused and, without prejudice to the generality of the power, shall include power in the case where payment of a fine by instalments has been ordered, to reduce the amount, or allow further time for the payment, of any instalment (whether the time for payment thereof has or has not expired) or to order payment of the fine so far as unpaid, by instalments of smaller amounts or at longer intervals than originally allowed.

58 Correction of errors

It shall be competent to correct any error in the record of the proceedings in a summary prosecution or in the extract of any sentence or order of the court at any time prior to execution thereon, and such correction shall be authenticated by the initials of the clerk of court.

59 Extract sufficient warrant for imprisonment

Where imprisonment is authorised by the sentence of a court of summary jurisdiction an extract of the finding and sentence in the form as nearly as may be of the appropriate form contained in Part V of the Second Schedule to this Act shall be a sufficient warrant for the apprehension and commitment of the accused, and no such extract shall be void or liable to be set aside on account of any error or defect in point of form.

60 Provision for court comprising more than one judge

In any proceedings in a court of summary jurisdiction consisting of more than one judge the signature of one judge shall be sufficient in all warrants or other proceedings prior or subsequent to conviction, although the presence and signature of two or more judges may be necessary to conviction of the offence in respect of which such warrants are granted or proceedings take place, and it shall not be necessary that the judge so signing shall be one of the judges trying or dealing with the case otherwise.

61 Conviction of part only of charge

A conviction of a part or parts only of the charge or charges labelled in a complaint shall imply dismissal of the rest of the complaint.

Review

62 Appeal by stated case

On the final determination of any summary prosecution, either party may, notwithstanding any provision in any statute excluding review, make application to the court to state a case for the opinion of the High Court, and on such application being made the court, subject to the conditions hereinafter mentioned, shall be bound to state a case for such opinion, and it shall thereupon be competent to appeal to, and to bring under the review of, the High Court by stated case—

- (a) the relevancy of the complaint;
- (b) any irregularity in procedure ;
- (c) any alleged error of the court in point of law ; and
- (d) generally any matter which might immediately before the commencement of this Act have been competently reviewed by suspension, advocacy, or appeal under the Heritable Jurisdictions (Scotland) Act, 1746, or otherwise.

63 Manner and time of appeal

- (1) Application to have a case stated shall be made at the time when judgment is given, or at any time within five days thereafter, and shall be signed by the appellant or his solicitor, and either written on the complaint or lodged with the clerk of court, and where the latter course is adopted the clerk of court shall enter in the record of the proceedings the date when the application was lodged, and shall thereupon intimate the appeal to the respondent.
- (2) Where such an application has been made by the person convicted, and the judge by whom he was convicted dies before signing the case or is precluded by illness or other cause from so doing, it shall be competent for the convicted person to present a bill of suspension to the High Court and to bring under the review of that Court any matter which might have been brought under review by stated case.

64 Caution by appellant

Immediately on an appeal under section sixty-two of this Act being taken the court shall fix a sum to be consigned by the appellant, or for which caution is to be found, to meet any fine and expenses imposed and the expenses of the appeal, and the appellant shall not be entitled to have a case stated unless within five days after the date of his appeal he has made consignation, or found such caution, to the satisfaction of the clerk of court and has also paid the clerk his fees for preparing the case:

Provided that

- (i) the court shall have power in any case where it deems it expedient so to do to dispense with consignation or the finding of caution, and
- (ii) a person prosecuting in the public interest shall not be bound to make consignation or to find caution.

65 Procedure where appellant in custody

- (1) If an appellant under section sixty-two of this Act is in custody the court may, on consignment being made or caution being found in accordance with the last foregoing section, grant interim liberation on such conditions as to caution or otherwise as the court may fix, and may grant a sist of execution, or may dispense with further consignment or caution, or may make any other interim order which the justice of the case may require, or may refuse to grant interim liberation.
- (2) An application for interim liberation shall be disposed of by the court within twenty-four hours after such application has been made. The appellant, if dissatisfied with the amount of caution fixed, or on refusal of liberation, may, within twenty-four hours after the judgment of the court, appeal there-against by a note of appeal written on the complaint and signed by himself or his solicitor, and the complaint and proceedings shall thereupon be transmitted to the clerk of justiciary, and the High Court or any judge thereof, either in court or in chambers, shall, after hearing parties, have power to review the decision of the inferior court and to grant interim liberation on such conditions as such Court or judge may think fit, or to refuse interim liberation.
- (3) If an appellant who has been granted interim liberation does not thereafter proceed with his appeal, the inferior court shall have power to grant warrant to apprehend and imprison him for such period of his sentence as at the date of his liberation remained unexpired, such period to run from the date of his imprisonment under such warrant.

66 Draft stated case to be prepared

- (1) The clerk of court shall, within ten days from an application for a stated case under section sixty-two of this Act, or, when consignment or caution is ordered, within five days from the date when consignment has been made or caution found, prepare a draft stated case, and shall within the said period send the draft to the appellant or his solicitor, and a duplicate thereof to the respondent or his solicitor.
- (2) A stated case shall be in the form as nearly as may be of the form contained in Part VI of the Second Schedule to this Act, and shall set forth the particulars of any matters competent for review which the appellant desires to bring under the review of the High Court, and of the facts, if any, proved in the case, and any point of law decided, and the grounds of the decision.

67 Adjustment, signature and transmission to High Court of case

- (1) Within one month after receipt of the draft case under the last foregoing section each party shall cause to be transmitted to the judge against whose judgment the appeal is taken and to the other parties a note of any adjustments he desires to have made on the draft case or intimate that he has no such adjustments to suggest, and if the appellant fails so to do he shall be deemed to have abandoned his appeal, and in any such case the court shall have the like power to grant warrant for his apprehension and imprisonment as is conferred by section sixty-five of this Act.
- (2) Within fourteen days after the latest date on which any such adjustments or intimation as aforesaid are or is received the judge against whose judgment the appeal is taken shall (unless the appellant is deemed to have abandoned his appeal) after considering any such adjustments, state and sign the case.

- (3) As soon as the case shall be signed by the judge against whose judgment the appeal is taken the clerk of court shall send it to the appellant and transmit the complaint, productions and any other proceedings in the cause to the clerk of justiciary.
- (4) The appellant shall within five days after receiving the case send a copy of it to the respondent and cause it to be transmitted to or lodged with the clerk of justiciary together with a certificate by himself or his solicitor that a copy has been sent to the respondent in accordance with the requirement herein-before contained.
- (5) If the appellant fails to comply with the last foregoing subsection he shall be deemed to have abandoned his appeal, and the court shall have the like power to grant warrant for his apprehension and imprisonment as is conferred by section sixty-five of this Act.

68 Abandonment of appeal

- (1) An appellant under section sixty-two of this Act may at any time prior to lodging the case with the clerk of justiciary abandon, his appeal by minute signed by himself or his solicitor, written on the complaint, or lodged with the clerk of court, and intimated to the respondent, but such abandonment shall be without prejudice to any other mode of appeal, review, advocacy, or suspension competent.
- (2) On the case being lodged with the clerk of justiciary, the appellant shall be held, to have abandoned any other mode of appeal which might otherwise have been open to him.

69 Record of procedure in appeal

On an appeal being taken under section sixty-two of this Act the clerk of court shall record on the complaint the different steps of procedure in the appeal, and such record shall be evidence of the dates on which the various steps of procedure took place. The forms of procedure in appeals shall be as nearly as may be in accordance with the forms contained in Part VI of the Second Schedule to this Act.

70 Computation of time

In computing any number of days for the purpose of the provisions of this Act relating to appeals Sundays and public holidays shall be excluded.

71 Hearing of appeal

- (1) A stated case under this Act shall be heard by the: High Court on such date as it may fix, and the High Court shall have power to affirm, reverse, or amend the determination of the inferior court, or to impose a fine instead of imprisonment where imprisonment has been awarded, or to reduce the period of imprisonment, or to reduce any fine imposed by the inferior court, or to remit the case back to the inferior court to be amended, and thereafter, on the case being amended and returned, to deliver judgment thereon, or to remit the case to the inferior court with their opinion thereon.
- (2) Where in any such case an appeal against an acquittal is sustained, the High Court may either convict and sentence the accused or may remit the case to the inferior court with instructions to convict and sentence the accused, who shall be bound to attend any diet fixed by such court for this purpose.

- (3) The High Court shall have power in appeals under this Act to award such expenses both in the High and inferior courts as it may think fit.
- (4) The High Court may remit to any fit person to inquire and report in regard to the facts and circumstances of any appeal, and on considering such report may pronounce judgment.
- (5) Where an appellant has been granted interim liberation, whether his appeal is under this Act or otherwise, he shall appear personally in court on the day or days fixed for the hearing of his appeal, failing which, unless the court shall on cause shown permit the appeal to be heard, he shall be held to have abandoned, it.
- (6) Where an appeal is dismissed or refused in whole or in part, the High Court shall have power to grant warrant to apprehend and imprison the appellant for any term, to run from the date of his imprisonment, not longer than that part of the term of imprisonment specified in the sentence brought under review which remained unexpired at the date of liberation.

72 Consent by prosecutor to setting aside conviction

- (1) Where an appeal has been taken under section sixty-two of this Act or by suspension or otherwise, and the prosecutor, on the appeal being intimated to him, is not prepared to maintain the judgment appealed against, he may by a minute signed by him and written on the complaint or lodged with the clerk of court consent to the conviction and sentence being set aside, either in whole or in part. Such minute shall set forth the grounds on which the prosecutor is of opinion that the judgment cannot be maintained.
- (2) A copy of any minute under the last foregoing subsection shall be sent by the prosecutor to the appellant, and the clerk of court shall thereupon ascertain from the appellant or his solicitor whether he desires to be heard by the High Court before the appeal is disposed of, and shall note on the record whether or not the appellant so desires, and shall thereafter transmit the complaint and relative proceedings to the clerk of justiciary.
- (3) The clerk of justiciary on receipt of a complaint and relative proceedings under the last foregoing subsection shall lay them before any judge of the High Court, either in court or in chambers, and such judge, after hearing parties if they desire to be heard, or without hearing parties, may set aside the conviction either in whole or in part and award expenses to the appellant not exceeding five guineas, or may refuse to set aside the conviction, in which case the proceedings shall be returned to the clerk of the inferior court, and the appellant shall then be entitled to proceed with his appeal in the same way as if it had been marked on the date when the complaint and proceedings are returned to the clerk of the inferior court.
- (4) Where proceedings are taken under this section, the preparation of the draft stated case shall be delayed pending the decision of the High Court.
- (5) The power conferred by this section to consent to a conviction and sentence being set aside shall be exercisable
 - (a) where the appeal is by stated case, at any time within ten days after the receipt by the prosecutor of the draft stated case; and
 - (b) where the appeal is by suspension at any time within ten days after the service on the prosecutor of the bill of suspension.

73 Convictions not to be quashed on certain grounds

- (1) No conviction, sentence, judgment, order of court, or other proceeding whatsoever under this Act shall be quashed for want of form, or, where the accused had legal assistance in his defence, shall be suspended or set aside in respect of any objections to the relevancy of the complaint, or to the want of specification therein, or to the competency or admission or rejection of evidence at the trial in the inferior court, unless such objections shall have been timeously stated at the trial by the solicitor of the accused.
- (2) Save as provided in sections sixty-two and seventy-one of this Act no conviction, sentence, judgment, order of court, or other proceeding whatsoever shall be quashed except on the ground of incompetency, or corruption, or malice, or oppression, or unless the High Court shall be of opinion that the accused has been misled as to the true nature of the charge against him or been prejudiced in his defence on the merits, and that a miscarriage of justice has resulted thereby:

Provided that the High Court may amend any conviction, sentence, judgment, order of court, or other proceeding, or may pronounce such other sentence, judgment, or order as they shall judge expedient.

74 Other modes of appeal

- (1) The provisions regulating appeals shall, subject to the provisions of this Act, be without prejudice to any other mode of appeal competent. Where it is competent to appeal against a sentence of imprisonment to the High Court under the Heritable Jurisdictions (Scotland) Act, 1746, or under any Act amending that Act, or applying or incorporating any of the provisions of that Act with regard to appeals, such appeal shall, if otherwise well taken, be held to be timeously made if lodged with the clerk of the court in which the sentence appealed against was pronounced and intimated to the respondent at any time during the appellant's imprisonment under the sentence appealed against, or within ten days from the date of the appellant's liberation from imprisonment under the said sentence:

Provided that this subsection shall not apply to any appeal against a sentence of imprisonment, unless the imprisonment under such sentence commenced within ten days after it was pronounced.

- (2) Any officer of law may serve any bill of suspension or other writ relating to an appeal.

75 Actions of damages in respect of proceedings under this Act

- (1) No judge, clerk of court, or prosecutor in the public interest shall be found liable by any court in damages for or in respect of any proceedings taken, act done, or judgment, decree, or sentence pronounced under this Act, unless
 - (a) the person suing has suffered imprisonment in consequence thereof; and
 - (b) such proceeding, act, judgment, decree, or sentence has been quashed; and
 - (c) the person suing shall specifically aver and prove that such proceeding, act, judgment, decree, or sentence was taken, done, or pronounced maliciously and without probable cause.
- (2) No such liability as aforesaid shall be incurred or found where such judge, clerk of court, or prosecutor shall establish that the person suing was guilty of the offence in respect whereof he had been convicted, or on account of which he had

been apprehended or had otherwise suffered, and that he had undergone no greater punishment than was assigned by law to such offence.

- (3) No action to enforce such liability as aforesaid shall lie unless it is commenced within two months after the proceeding, act, judgment, decree, or sentence founded on, or in the case where the Act under which the action is brought fixes a shorter period, within that shorter period.
- (4) In this section " judge " shall not include " sheriff," and the provisions of this section shall be without prejudice to the privileges and immunities possessed by sheriffs.

76 Acts of Adjournal making rules, etc.

- (1) It shall be lawful for the High Court, by Act of Adjournal—
 - (a) to make rules to give effect to any of the provisions of this Act;
 - (b) to make rules regulating the procedure under this Act;
 - (c) to cancel or amend any of the forms of procedure under this Act or to provide additional forms ;
 - (d) to fix and regulate the fees payable in the High Court and the inferior courts in proceedings under this Act.
- (2) Until regulated under the foregoing provisions of this section the fees payable in the High Court shall be those payable at the commencement of this Act and the fees payable in the inferior courts shall be those set forth in the Third Schedule to this Act.
- (3) Nothing in this section shall affect the regulations enacted by the Courts of Law Fees (Scotland) Act, 1895.
- (4) Any power conferred on the High Court by this Act to make rules shall be exercisable by statutory instrument, and the Statutory Instruments Act, 1946, shall apply to a statutory instrument containing rules made by the High Court in the exercise of such power in like manner as if the rules had been made by a Minister of the Crown.

77 Interpretation

In this Act, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them—

" Bail " includes any pledge lodged by or on behalf of an accused person as security for his appearance at any diet of court:

" Borstal training " and " Detention centre " have the like meanings as in the Prisons (Scotland) Act, 1952:

" County " extends to the limits within which a sheriff has jurisdiction in criminal matters, whether by statute or at common law, and includes district of a county:

" Court " and " Court of summary jurisdiction " mean any court of summary criminal jurisdiction, and include sheriff court, justice of peace court, burgh court, police court, and the court of the bailie of the river and firth of Clyde:

" District of a county " means any part of a county in which a separate sheriff court is held and for which a separate procurator fiscal is appointed:

" Extract conviction " and " extract of previous conviction " include certified copy conviction, certificate of conviction, and any other document under the

hand of the proper officer in use to be issued from any court of justice of the United Kingdom as evidence of a conviction or convictions:

" High Court " means the High Court of Justiciary;

" Judge " means any sheriff, justice of the peace, and any magistrate or other judge of a court of summary criminal jurisdiction :

" Justice of the peace " means any of Her Majesty's justices of the peace for any county or county of a city in Scotland acting within such county or county of a city:

" Legalised police cells " has the like meaning as in the Prisons (Scotland) Act, 1952:

" Offence " means any act, attempt or omission punishable by law:

" Officer of law " includes chief constable, deputy chief constable, constable, sheriff officer, prison officer, and any person having authority to execute a warrant of court :

" Order " means any order, byelaw, rule, or regulation having statutory authority:

" Probation order " has the like meaning as in the Criminal Justice (Scotland) Act, 1949 :

" Prosecutor " includes procurator-fiscal, assistant procurator-fiscal, procurator-fiscal depute, justice of the peace fiscal, burgh prosecutor, and any other person prosecuting in the public interest, private prosecutor, and complainer, and any person duly authorised to represent or act for any public prosecutor:

" Remand centre," has the like meaning as in the Prisons (Scotland) Act, 1952;

" Remand home " means premises established or used by a county or town council under the provisions of section eighty-one of the Children and Young Persons (Scotland) Act, 1937:

" Statute " includes a Provisional Order confirmed by Act of Parliament:

" Witness " includes haver.

78 Repeals and savings

- (1) The enactments set forth in the Fourth Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (2) Nothing in this repeal shall affect any Act of Adjournal, rule, order, regulation passed or made, fee fixed or thing done under any enactment repealed by this Act and every such Act of Adjournal, rule, order, regulation, fee or thing shall, if in force at the commencement of this Act, continue in force and be deemed to have been passed, made, fixed or done under the corresponding provision of this Act.
- (3) Nothing in this Act shall make it unlawful to detain an accused person in custody pending trial otherwise than in prison if such detention would have been lawful prior to the commencement of this Act.
- (4) Any document referring to any Act or enactment repealed by this Act shall be construed as referring to this Act or to the corresponding enactment in this Act.
- (5) The mention of particular matters in this section shall not be taken to affect the general application to this Act of section thirty-eight of the Interpretation Act, 1889 (which relates to the effect of repeals).

79 Short title, commencement and extent

- (1) This Act may be cited as the Summary Jurisdiction (Scotland) Act, 1954.
- (2) This Act shall come into operation on the first day of January, nineteen hundred and fifty-five.
- (3) Save as otherwise expressly provided this Act shall extend to Scotland only.