



Summary Jurisdiction (Scotland) Act 1954

1954 CHAPTER 48

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

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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

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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 consignation 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.

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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

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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

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