



Summary Jurisdiction (Scotland) Act 1954

1954 CHAPTER 48

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.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

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.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (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

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

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.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (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.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (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.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

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.