

## 1971 No. 446 (S.64)

## SUMMARY JURISDICTION, SCOTLAND

## Act of Adjournal (Summary Proceedings) (Children) 1971

Made - - - - 16th March 1971

Coming into Operation 15th April 1971

The Lord Justice-General, Lord Justice-Clerk and Lords Commissioners of Justiciary, under and by virtue of the powers conferred upon them by section 76(1) of the Summary Jurisdiction (Scotland) Act 1954(a), as extended by section 52(2) of the Children and Young Persons (Scotland) Act 1937(b) as amended by section 31 of, and paragraph 11(2) of Schedule 2 to, the Social Work (Scotland) Act 1968(c), and of all other powers competent to them in that behalf, do hereby enact and declare as follows :

1. This Act of Adjournal may be cited as the Act of Adjournal (Summary Proceedings) (Children) 1971 and shall come into operation on 15th April 1971.

2.—(1) In this Act of Adjournal the following expressions shall have the meanings hereby respectively assigned to them, viz :

“the Act of 1937” means the Children and Young Persons (Scotland) Act 1937(b) as amended by the Act of 1968.

“the Act of 1968” means the Social Work (Scotland) Act 1968(c).

“child” means a child within the meaning of Part III of the Act of 1968.

“Court” means the sheriff sitting as a court of summary jurisdiction.

(2) In this Act of Adjournal, any reference to any enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment.

(3) The Interpretation Act 1889(d) shall apply to the interpretation of this Act of Adjournal as it applies to the interpretation of an Act of Parliament.

3. Proceedings in a Court against or in respect of a child charged with an offence shall be commenced on the instructions of the Lord Advocate by complaint at the instance of the procurator fiscal, and shall thereafter proceed as regards citation, service, finding of security, the issue of warrants, and other steps of procedure, as nearly as may be in accordance with the provisions of the Summary Jurisdiction (Scotland) Act 1954(a), as modified by the Act of 1937 and by this Act of Adjournal.

4. The forms used in any such proceedings as are referred to in paragraph 3 hereof shall be, *mutatis mutandis*, those applicable to proceedings under the Summary Jurisdiction (Scotland) Act 1954(a), with such variations as circumstances may require.

(a) 1954 c. 48.

(b) 1937 c. 37.

(c) 1968 c. 49.

(d) 1889 c. 63.

5.—(1) In any such proceedings as are referred to in paragraph 3 hereof, the Court shall, except when the child is represented by solicitor or counsel, allow the parent or guardian of the child to assist him in conducting his defence to the complaint or in presenting his case, including the examination or cross-examination of witnesses.

(2) Where in any such proceedings the parent or guardian cannot be found or cannot in the opinion of the Court reasonably be required to attend, the Court may allow any relative or other responsible person to take the place of the parent or guardian for the purposes of this Act of Adjournal.

6. In any case where a child is brought before a Court charged with an offence the following procedure shall be followed, viz :

- (1) The Court shall explain to the child the substance of the charge in simple language suitable to his age and understanding, and shall then ask the child whether he admits the charge.
- (2) If the child has been brought before the Court on apprehension, the Court shall inform him that he is entitled to an adjournment of the case for not less than 48 hours.
- (3) If the child does not admit the charge the Court may adjourn the case for trial to as early a diet as is consistent with the just interest of both parties, and in that event shall give intimation or order intimation to be given of such adjourned diet to such child and his parent or guardian : but the Court may proceed to trial forthwith if the Court considers this to be advisable in the interests of the child or to be necessary to secure the examination of witnesses who would not otherwise be available.
- (4) (a) At the trial of the case the Court shall hear the evidence of the witnesses in support of the charge. At the close of the evidence-in-chief of each witness the witness may be cross-examined by or on behalf of the child.  
(b) If, in any case where the child is not represented by solicitor or counsel or assisted in his defence as provided by this Act of Adjournal, the child, instead of asking questions by way of cross-examination, makes assertions, the Court shall then put to the witness such questions as it thinks necessary on behalf of the child and may for this purpose question the child in order to bring out or clear up any point arising out of any such assertions.
- (5) At the close of the case for the prosecution, the Court shall tell the child that he may give evidence or make a statement, and the evidence of any witness for the defence shall be heard.
- (6) Where the Court is satisfied, after trial or otherwise, that the child has committed an offence, the Court shall so inform the child and,
  - (a) he and his parent or guardian, or other person acting in accordance with this Act of Adjournal, shall be given an opportunity of making a statement ;
  - (b) the Court shall obtain such information as to the general conduct, home surroundings, school record, health and character of the child as may enable it to deal with the case in his best interests, and shall if such information is not fully available consider the desirability of remanding the child for such enquiry as may be necessary ;

- (c) the Court shall take into consideration any report which may be made or obtained by a local authority in pursuance of section 43 of the Act of 1937 ;
- (d) any written report of a local authority, education authority, or registered medical practitioner may be received and considered by the Court without being read aloud, provided that
  - (i) the child shall be told the substance of any part of the report bearing on his character or conduct which the Court considers to be material to the manner in which he should be dealt with ;
  - (ii) the parent or guardian, or other person acting in accordance with this Act of Adjournal, shall, if present, be told the substance of any part of the report which the Court considers to be material as aforesaid and which has reference to his character or conduct, or the character, conduct, home surroundings or health of the child ; and
  - (iii) if the child or his parent or guardian, or other person acting in accordance with this Act of Adjournal, having been told the substance of any part of any such report, desires to produce evidence with reference thereto, the Court, if it thinks the evidence material, shall adjourn the proceedings for the production of further evidence, and shall, if necessary, require the attendance at the adjourned hearing of the person who made the report ;
- (e) if the Court acting in pursuance of this paragraph of the Act of Adjournal considers it necessary in the interests of the child, it may require the parent or guardian, or other person acting in accordance with this Act of Adjournal, or the child, as the case may be, to withdraw from the court.

- (7) The Court shall thereupon, unless it thinks it undesirable to do so, inform the parent or guardian, or other person acting in accordance with this Act of Adjournal, of the manner in which it proposes to deal with the child and shall allow the parent or guardian, or other person acting in accordance with this Act of Adjournal, to make a statement.

7. In any case where a child is to be brought before a Court upon information given on oath that he has failed to comply with any of the requirements of a probation order, the following procedure shall be followed, viz :

- (1) The person under whose supervision the child has been placed shall immediately upon making oath as aforesaid give intimation of the fact to the procurator fiscal ;
- (2) The citation (if any) requiring the appearance of the child shall be accompanied by a notice giving the reasons for the issue of such citation and stating in what respects it is alleged that any one or more of the requirements of the order has or have not been complied with by him, and in any case where the child has been apprehended without prior citation such notice shall be handed to him in court.
- (3) The Court shall explain to the child in simple language suitable to his age and understanding the effect of the notice and shall then ask him whether he admits having failed to comply with the requirements of the order as alleged : provided that where the notice has been handed to the child in court, the Court may, if it thinks it desirable, adjourn the proceedings for 48 hours before so interrogating him.

(4) If the child does not admit the alleged failure to comply with the requirements of the order, the proceedings shall thereafter be conducted and the matter shall be determined by the Court in like manner as if the same were a matter which had arisen for determination upon the original complaint.

8. The Court may from time to time and at any stage of a case remand a child for information to be obtained with respect to him.

9. The Court shall take steps so far as possible to prevent children attending sittings of the Court from mixing with one another. In so far as this cannot be achieved by holding separate sittings or fixing different hours for the different cases and types of cases coming before it, the Court may bring into use extra waiting rooms, or may provide for an attendant in the waiting room or rooms.

And the Lords appoint this Act of Adjournal to be inserted in the Books of Adjournal, and to be published in the *Edinburgh Gazette*.

Edinburgh,  
16th March 1971.

*J. L. Clyde,*  
I.P.D.

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#### EXPLANATORY NOTE

*(This Note is not part of the Act of Adjournal.)*

This Act of Adjournal prescribes procedure in the case of summary proceedings brought before the sheriff in respect of an offence alleged to have been committed by a child.

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