

Status: Point in time view as at 01/09/2005.

Changes to legislation: Criminal Procedure (Scotland) Act 1995, SCHEDULE 3 is up to date with all changes known to be in force on or before 18 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 3

Sections 64(6) and 138(4)

INDICTMENTS AND COMPLAINTS

- 1 An accused may be named and designed—
 - (a) according to the existing practice; or
 - (b) by the name given by him and designed as of the place given by him as his residence when he is examined or further examined; or
 - (c) by the name under which he is committed until liberated in due course of law.
- 2 It shall not be necessary to specify by any *nomen juris* the offence which is charged, but it shall be sufficient that the indictment or complaint sets forth facts relevant and sufficient to constitute an indictable offence or, as the case may be, an offence punishable on complaint.
- 3 It shall not be necessary to allege that any act or commission or omission charged was done or omitted to be done “wilfully” or “maliciously”, or “wickedly and feloniously”, or “falsely and fraudulently” or “knowingly”, or “culpably and recklessly”, or “negligently”, or in “breach of duty”, or to use such words as “knowing the same to be forged”, or “having good reason to know”, or “well knowing the same to have been stolen”, or to use any similar words or expressions qualifying any act charged, but such qualifying allegation shall be implied in every case.
- 4
 - (1) The latitude formerly used in stating time shall be implied in all statements of time where an exact time is not of the essence of the charge.
 - (2) The latitude formerly used in stating any place by adding to the word “at”, or to the word “in”, the words “or near”, or the words “or in the near neighbourhood thereof” or similar words, shall be implied in all statements of place where the actual place is not of the essence of the charge.
 - (3) Subject to sub-paragraph (4) below, where the circumstances of the offence charged make it necessary to take an exceptional latitude in regard to time or place it shall not be necessary to set forth the circumstances in the indictment, or to set forth that the particular time or the particular place is to the prosecutor unknown.
 - (4) Where exceptional latitude is taken as mentioned in sub-paragraph (3) above, the court shall, if satisfied that such exceptional latitude was not reasonable in the circumstances of the case, give such remedy to the accused by adjournment of the trial or otherwise as shall seem just.
 - (5) Notwithstanding sub-paragraph (4) above, nothing in any rule of law shall prohibit the amendment of an indictment or, as the case may be, a complaint to include a time outwith the exceptional latitude if it appears to the court that the amendment would not prejudice the accused.

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- (6) The latitude formerly used in describing quantities by the words “or thereby”, or the words “or part thereof”, or the words “or some other quantity to the prosecutor unknown” or similar words, shall be implied in all statements of quantities.
- (7) The latitude formerly used in stating details connected with the perpetration of any act regarding persons, things or modes by inserting general alternative statements followed by the words “to the prosecutor unknown” or similar words, shall be implied in every case.
- (8) In this paragraph references to latitude formerly used are references to such use before the commencement of—
 - (a) in the case of proceedings on indictment, the ^{M1}Criminal Procedure (Scotland) Act 1887; and
 - (b) in the case of summary proceedings, ^{M2}the Summary Jurisdiction (Scotland) Act 1908.

Marginal Citations

M1 50 & 51 Vict. c. 35.

M2 1954 c. 48.

- 5 The word “money” shall include cheques, banknotes, postal orders, money orders and foreign currency.
- 6 Any document referred to shall be referred to by a general description and, where it is to be produced in proceedings on indictment, by the number given to it in the list of productions for the prosecution.
- 7 In an indictment which charges a crime importing personal injury inflicted by the accused, resulting in death or serious injury to the person, the accused may be lawfully convicted of the aggravation that the assault or other injurious act was committed with intent to commit such crime.
- 8 (1) In an indictment or a complaint charging the resetting of property dishonestly appropriated—
 - (a) having been taken by theft or robbery; or
 - (b) by breach of trust, embezzlement or falsehood, fraud and wilful imposition, it shall be sufficient to specify that the accused received the property, it having been dishonestly appropriated by theft or robbery, or by breach of trust and embezzlement, or by falsehood, fraud and wilful imposition, as the case may be.
- (2) Under an indictment or a complaint for robbery, theft, breach of trust and embezzlement or falsehood, fraud and wilful imposition, an accused may be convicted of reset.
- (3) Under an indictment or a complaint for robbery, breach of trust and embezzlement, or falsehood, fraud and wilful imposition, an accused may be convicted of theft.
- (4) Under an indictment or a complaint for theft, an accused may be convicted of breach of trust and embezzlement, or of falsehood, fraud and wilful imposition, or may be convicted of theft, although the circumstances proved may in law amount to robbery.
- (5) The power conferred by sub-paragraphs (2) to (4) above to convict a person of an offence other than that with which he is charged shall be exercisable by the sheriff

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- court before which he is tried notwithstanding that the other offence was committed outside the jurisdiction of that sheriff court.
- 9 (1) Where two or more crimes or acts of crime are charged cumulatively, it shall be lawful to convict of any one or more of them.
- (2) Any part of the charge in an indictment or complaint which itself constitutes an indictable offence or, as the case may be an offence punishable on complaint, shall be separable and it shall be lawful to convict the accused of that offence.
- (3) Where any crime is charged as having been committed with a particular intent or with particular circumstances of aggravation, it shall be lawful to convict of the crime without such intent or aggravation.
- 10 (1) Under an indictment or, as the case may be, a complaint which charges a completed offence, the accused may be lawfully convicted of an attempt to commit the offence.
- (2) Under an indictment or complaint charging an attempt, the accused may be convicted of such attempt although the evidence is sufficient to prove the completion of the offence said to have been attempted.
- (3) Under an indictment or complaint which charges an offence involving personal injury inflicted by the accused, resulting in death or serious injury to the person, the accused may be lawfully convicted of the assault or other injurious act, and may also be lawfully convicted of the aggravation that the assault or other injurious act was committed with intent to commit such offence.
- 11 In an indictment or complaint charging a contravention of an enactment the description of the offence in the words of the enactment contravened, or in similar words, shall be sufficient.
- 12 In a complaint charging a contravention of an enactment—
- (a) the statement that an act was done contrary to an enactment shall imply a statement—
- (i) that the enactment applied to the circumstances existing at the time and place of the offence;
- (ii) that the accused was a person bound to observe the enactment;
- (iii) that any necessary preliminary procedure had been duly gone through; and
- (iv) that all the circumstances necessary to a contravention existed, and, in the case of the contravention of a subordinate instrument, such statement shall imply a statement that the instrument 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; and
- (b) where the offence is created by more than one section of one or more statutes or subordinate instruments, it shall be necessary to specify only the leading section or one of the leading sections.
- 13 In the case of an offence punishable under any enactment, it shall be sufficient to allege that the offence was committed contrary to the enactment and to refer to the enactment founded on without setting out the words of the enactment at length.
- 14 Where—
- (a) any act alleged in an indictment or complaint as contrary to any enactment is also criminal at common law; or

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- (b) where the facts proved under the indictment or complaint do not amount to a contravention of the enactment, but do amount to an offence at common law,

it shall be lawful to convict of the common law offence.

- 15 Where the evidence in a trial is sufficient to prove the identity of any person, corporation or company, or of any place, or of anything, it shall not be a valid objection to the sufficiency of the evidence that any particulars specified in the indictment or complaint relating to such identity have not been proved.
- 16 Where, in relation to an offence created by or under an enactment any exception, exemption, proviso, excuse, or qualification, is expressed to have effect whether by the same or any other enactment, the exception, exemption, proviso, excuse or qualification need not be specified or negatived in the indictment or complaint, and the prosecution is not required to prove it, but the accused may do so.
- 17 It shall be competent to include in one indictment or complaint both common law and statutory charges.
- 18 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 indictment or, as the case may be, complaint shall, in the absence of evidence to the contrary, be presumed.
- 19 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 level 4 on the standard scale 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.

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