



# Criminal Procedure (Scotland) Act 1975

## 1975 CHAPTER 21

### PROCEDURE PRIOR TO TRIAL

### CONVICTION AND SENTENCE

#### *Adjournment and remand*

#### **179 Power of court to adjourn a case before sentence.**

- (1) It is hereby declared that the power of a court to adjourn the hearing of a case includes power, after a person has been convicted or the court has found that he committed the offence and before he has been sentenced or otherwise dealt with, to adjourn the case for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with his case: [<sup>F1</sup>and where the court [<sup>F2</sup>adjourns the case solely for that purpose] it shall remand the accused in custody or on bail][<sup>F3</sup>or ordain him to appear at the adjourned diet]:

Provided that a court shall not [<sup>F4</sup>solely]for the purpose aforesaid adjourn the hearing of a case for any single period exceeding

- [<sup>F5</sup>(a) where the accused is remanded in custody, three weeks; or  
(b) where he is remanded on bail or is ordained to appear, eight weeks but only on cause shown and otherwise four weeks]

- [<sup>F6</sup>(2) An accused who is remanded under this section may appeal against the refusal of bail or against the conditions imposed within 24 hours of his remand, by note-of-appeal presented to the High Court, either in court or in chambers, may, after hearing parties—  
[ review the order appealed against and either grant bail on such conditions as  
<sup>F7</sup>(a) it thinks fit or ordain the accused to appear at the adjourned diet;]  
(b) confirm the order.]

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#### Textual Amendments

- F1** Words inserted by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\), s. 5\(a\)](#)
- F2** Words in [s. 179\(1\)](#) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117\(1\), Sch. 6 Pt. I para. 68\(a\)](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)
- F3** Words inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), Sch. 6 para. 1, Sch. 7 para. 36\(a\)](#)
- F4** Word in [s. 179\(1\)](#) proviso inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117\(1\), Sch. 6 Pt. I para. 68\(b\)](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)
- F5** Words in the proviso in [s. 179\(1\)](#) substituted (18.9.1993) by [1993 c. 9, s. 47\(1\), Sch. 5 para. 1\(6\)](#) (with [s. 47\(2\), Sch. 6 paras. 1, 2](#)); S.I. 1993/2050, arts. 3(3), 4(1)(c), [Sch. 2](#)
- F6** [S. 179\(2\)](#) added by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\), s. 5\(b\)](#)
- F7** [S. 179\(2\)\(a\)](#) substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), Sch. 6 para. 1, Sch. 7 para. 36\(b\)](#)

### [<sup>F8</sup>179A Offence committed by person under supervision etc.: provision of local authority report.

Where a person specified in section 27(1)(b)(i) to (vi) of the Social Work (Scotland) Act 1968 commits an offence, the court shall not dispose of the case without obtaining from the local authority in whose area the person resides a report as to—

- (a) the circumstances of the offence; and
- (b) the character of the offender, including his behaviour while under the supervision, or as the case may be subject to the order, so specified in relation to him.]

#### Textual Amendments

- F8** [S. 179A](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 37; S.I. 1996/517, arts. 3\(2\), 4-6, Sch. 2](#)

### 180 Remand for inquiry into physical or mental condition.

(1) Without prejudice to any powers exercisable by a court under the last foregoing section, where a person is charged before a court with an offence punishable with imprisonment, and the court is satisfied that he did the act or made the omission charged but is of opinion that an inquiry ought to be made into his physical or mental condition before the method of dealing with him is determined, the court [<sup>F9</sup>shall—

- (a) for the purpose of inquiry solely into his physical condition, remand him in custody or on bail;
- (b) for the purpose of inquiry into his mental condition (whether or not in addition to his physical condition), remand him in custody or on bail or, where the court is satisfied—
  - (i) on the written or oral evidence of a medical practitioner, that the person appears to be suffering from a mental disorder; and
  - (ii) that a hospital is available for his admission and suitable for his detention,

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make an order committing him to that hospital,  
for] such period or periods, no single period exceeding three weeks, as the court thinks necessary to enable a medical examination and report to be made.

[<sup>F10</sup>(1A) Where the court is of the opinion that a person ought to continue to be committed to hospital for the purpose of inquiry into his mental condition following the expiry of the period specified in an order for committal to hospital under paragraph (b) of subsection (1) above, the court may—

- (a) if the condition in sub-paragraph (i) of that paragraph continues to be satisfied and a suitable hospital is available for his continued detention, renew the order for such further period not exceeding three weeks as the court thinks necessary to enable a medical examination and report to be made; and
- (b) in any other case, remand the person in custody or on bail in accordance with subsection (1) above.

(1B) An order under subsection (1A)(a) above may, unless objection is made by or on behalf of the person to whom it relates, be made in his absence.

(1C) Where, before the expiry of the period specified in an order for committal to hospital under subsection (1)(b) above, the court considers, on an application made to it, that committal to hospital is no longer required in relation to the person, the court shall revoke the order and may make such other order, under subsection (1)(a) above or any other provision of this Part of this Act, as the court considers appropriate.]

(2) Where a person is remanded on bail under this section, . . . <sup>F11</sup> it shall be a condition of the [<sup>F12</sup>order granting bail] that he shall—

- (a) undergo a medical examination by a duly qualified medical practitioner or, where the inquiry is into his mental condition and the [<sup>F12</sup>order granting bail] so specifies, two such practitioners; and
- (b) for the purpose attend at an institution or place, or on any such practitioner specified in the [<sup>F12</sup>order granting bail] and, where the inquiry is into his mental condition, comply with any directions which may be given to him for the said purpose by any person so specified or by a person of any class so specified;

and, if arrangements have been made for his reception, it may be a condition of the [<sup>F12</sup>order granting bail] that the person shall, for the purpose of the examination, reside in an institution or place specified as aforesaid, not being an institution or place to which he could have been remanded in custody, until the expiry of such period as may be so specified or until he is discharged therefrom, whichever first occurs.

(3) . . . . . <sup>F13</sup>

(4) On exercising the powers conferred by this section [<sup>F14</sup>to remand in custody or on bail]the court shall—

- (a) where the person is remanded in custody, send to the institution or place in which he is detained, and
- (b) where the person is released on bail, send to the institution or place at which or the person by whom he is to be examined,

a statement of the reasons for which the court is of opinion that an inquiry ought to be made into his physical or mental condition, and of any information before the court about his physical or mental condition.

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- [<sup>F15</sup>(4A) On making an order of committal to hospital under subsection (1)(b) above the court shall send to the hospital specified in the order a statement of the reasons for which the court is of the opinion that an inquiry ought to be made into the mental condition of the person to whom it relates, and of any information before the court about his mental condition.]
- [<sup>F16</sup>(5) A person remanded under this section may appeal against the refusal of bail or against the conditions imposed [<sup>F17</sup>, and a person committed to hospital under this section may appeal against the order of committal,] within 24 hours of his remand [<sup>F18</sup>or, as the case may be, committal], by note of appeal presented to the High Court, and the High Court, either in court or in chambers, may after hearing parties—
- (a) review the order and grant bail on such conditions as it thinks fit; or
  - (b) confirm the order; ]
- [<sup>F19</sup>or
- (c) in the case of an appeal against an order of committal to hospital, revoke the order and remand the person in custody.]
- [<sup>F20</sup>(6) The court may, on cause shown, vary an order for committal to hospital under subsection (1)(b) above by substituting another hospital for the hospital specified in the order.
- (7) Subsection (1)(b) above shall apply to the variation of an order under subsection (6) above as it applies to the making of an order for committal to hospital.]

#### Textual Amendments

- F9** S. 180(1)(a)(b) and word substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) for words by 1995 c. 20, s. 55(2); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F10** S. 180(1A)-(1C) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 55(3); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F11** Words repealed by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 2**
- F12** Words substituted by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 1 para. 5**
- F13** S. 180(3) repealed by Bail etc. (Scotland) Act 1980 (c. 4), **Sch. 2**
- F14** Words in s. 180(4) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 55(4); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F15** S. 180(4A) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 55(5); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F16** S. 180(5) added by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), s. 6(b)
- F17** Words in s. 180(5) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 55(6)(a); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F18** Words in s. 180(5) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 55(6)(b); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F19** S. 180(5)(c) and word “or” immediately preceding it inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 55(6)(c); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F20** S. 180(6)(7) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 55(7); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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### *Admonition and discharge*

#### **181 Admonition.**

A court may, if it appears to meet the justice of the case, dismiss with an admonition any person [<sup>F21</sup>convicted] by the court of any offence.

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#### **Textual Amendments**

**F21** Words in s. 181 substituted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(2)**

#### **182 Absolute discharge.**

Where a person is convicted of an offence (other than an offence the sentence for which is fixed by law) the court, if it is of opinion, having regard to the circumstances, including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate may, instead of sentencing him, make an order discharging him absolutely.

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#### **Modifications etc. (not altering text)**

**C1** S. 182 amended by **Licensed Premises (Exclusion of Certain Persons) Act 1980** (c. 32, SIF 68A:1, 2), s. 1(2)(c)

*[<sup>F22</sup> Caution]*

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#### **Textual Amendments**

**F22** S. 182A and cross-heading inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 69**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

#### **182A [<sup>F23</sup> Caution.]**

Where a person is convicted of an offence (other than an offence the sentence for which is fixed by law) the court may, instead of or in addition to imposing a fine or a period of imprisonment, ordain the accused to find caution for good behaviour for a period not exceeding 12 months and to such amount as the court considers appropriate.

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#### **Textual Amendments**

**F23** S. 182A inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 69**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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## Probation

### 183 Probation.

(1) [<sup>F24</sup>Subject to subsection (1A) below,] where a person is convicted of an offence (other than an offence the sentence for which is fixed by law), the court, if it is of opinion having regard to the circumstances, including the nature of the offence and the character of the offender [<sup>F25</sup>and having obtained a report as to the circumstances and character of the offender], that it is expedient to do so, may instead of sentencing him make a probation order, that is to say an order requiring the offender to be under supervision for a period to be specified in the order of not less than [<sup>F26</sup>six months] nor more than three years.

[<sup>F27</sup>(1A) A court shall not make a probation order under subsection (1) above unless it is satisfied that suitable arrangements for the supervision of the offender can be made

- [ in a case other than that mentioned in paragraph (b) below, by the local
- <sup>F28</sup>(a) authority in whose area he resides or is to reside; or
- (b) in a case where, by virtue of section 188(1) of this Act, subsection (2) of this section would not apply, by the probation committee for the area which contains the petty sessions area which would be named in the order]

.]

(2) A probation order shall be as nearly as may be in the form prescribed by Act of Adjournal, and shall name the local authority area in which the offender resides or is to reside and the order shall make provision for the offender to be under the supervision of an officer of the local authority of that area, or, where the offender resides or is to reside in a local authority area in which the court has no jurisdiction the court shall name the appropriate court (being such a court as could have been named in any amendment of the order in accordance with the provisions of Schedule 5 to this Act) in the area of residence or intended residence, and the court last mentioned shall require the local authority for that area to arrange for the offender to be under the supervision of an officer of that authority.

(3) Subject to the provisions of Schedule 5 to this Act relating to probationers who change their residence, an offender in respect of whom a probation order is made shall be required to be under the supervision of an officer of the local authority as aforesaid.

(4) Subject to the provisions of the next following section, a probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements as the court, having regard to the circumstances of the case, considers

- [<sup>F29</sup>(a) [<sup>F30</sup>conducive to] securing the good conduct of the offender or [<sup>F31</sup>to] preventing a repetition by him of the offence or the commission of other offences; [<sup>F32</sup>or
- (b) where the probation order is to include such a requirement as is mentioned in subsection (5A) [<sup>F33</sup>or (5B)] below, conducive to securing or preventing the aforesaid matters.]

(5) Without prejudice to the generality of the last foregoing subsection, a probation order may include requirements relating to the residence of the offender:

Provided that—

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- (a) before making an order containing any such requirements, the court shall consider the home surroundings of the offender; and
- (b) where the order requires the offender to reside in any institution or place, the name of the institution or place and the period for which he is so required to reside shall be specified in the order, and that period shall not extend beyond 12 months from the date of the requirement or beyond the date when the order expires.

[<sup>F34</sup>(5A) Without prejudice to the generality of subsection (4) above, where [<sup>F35</sup>an offender has been convicted of an offence punishable by imprisonment and] a court which is considering making a probation order—

- (a) is satisfied that the offender is of or over 16 years of age and has committed <sup>F36</sup> . . . that the conditions for the making of a community service order under the <sup>M1</sup>Community Service by Offenders (Scotland) Act 1978 specified in paragraphs (a) and (c) of section 1(2) of that Act have been met;
- (b) has been notified by the Secretary of State that arrangements exist for persons who reside in the locality where the offender resides, or will be residing when the probation order comes into force, to perform unpaid work as a requirement of a probation order; and
- (c) is satisfied that provision can be made under the arrangements mentioned in paragraph (b) above for the offender to perform unpaid work under the probation order,

it may include in the probation order, in addition to any other requirement, a requirement that the offender shall perform unpaid work for such number of hours (being in total not less than forty nor more than two hundred and forty) as may be specified in the probation order; and the <sup>M2</sup>said Act of 1978 shall apply to a probation order including such a requirement as it applies to a community service order, but as if—

- (i) subsections (1), (2)(b) and (d) and (4)(b) of section 1 and sections 4 [<sup>F37</sup>, 6 and 6A] were omitted;
- (ii) in section 1(5) for the words “subsection (1) above” there were substituted the words “subsection (5A) of section 183 or, as the case may be, 384 of the 1975 Act”; and
- (iii) any other necessary modifications were made.]

[<sup>F38</sup>(5B) Without prejudice to the generality of subsection (4) above, where a court is considering making a probation order it may include in the probation order, in addition to any other requirement, a requirement that the offender shall pay compensation either in a lump sum or by instalments for any personal injury, loss or damage caused (whether directly or indirectly) by the acts which constituted the offence; and the following provisions of the Criminal Justice (Scotland) Act 1980 shall apply to such a requirement as if any reference in them to a compensation order included a reference to a requirement to pay compensation under this subsection—

- section 58(2) and (3);
- section 59 (except the proviso to subsection (1) and subsection (2));
- section 60;
- section 62;
- section 64 (except paragraph (a));
- section 67.

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- (5C) Where the court imposes a requirement to pay compensation under subsection (5B) above—
- (a) it shall be a condition of a probation order containing such a requirement that payment of the compensation shall be completed not more than eighteen months after the making of the order or not later than two months before the end of the period of probation whichever first occurs;
  - (b) the court, on the application of the offender or the officer of the local authority responsible for supervising the offender, may vary the terms of the requirement, including the amount of any instalments, in consequence of any change which may have occurred in the circumstances of the offender; and
  - (c) in any proceedings for breach of a probation order where the breach consists only in the failure to comply with a requirement to pay compensation, a document purporting to be a certificate signed by the clerk of the court for the time being having jurisdiction in relation to the order that the compensation or, where payment by instalments has been allowed, any instalment has not been paid shall be sufficient evidence of such breach.]
- (6) Before making a probation order, the court shall explain to the offender in ordinary language the effect of the order (including any additional requirements proposed to be inserted therein under subsection (4) [F39 or (5)(5A), (5B) or (5C)] of this section or under the next following section) and that if he fails to comply therewith or commits another offence during the probation period he will be liable to be sentenced for the original offence and the court shall not make the order unless the offender expresses his willingness to comply with the requirements thereof.
- (7) The clerk of the court by which a probation order is made or of the appropriate court, as the case may be, shall
- [F40(a)] cause copies thereof to be given to the officer of the local authority who is to supervise the probationer F41 . . . and to the person in charge of any institution or place in which the probationer is required to reside under the probation order. [F42; and
  - (b) cause a copy thereof to be given to the probationer or sent to him by registered post or by the recorded delivery service; and an acknowledgement or certificate of delivery of a letter containing such copy order issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgement or certificate.]

#### Textual Amendments

- F24** Words in s. 183(1) inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 61(1)(a); S.I. 1991/850, art. 3, **Sch.**
- F25** Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 10(a)**
- F26** Words substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 10(b)**
- F27** S. 183(1A) inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 61(1)(b); S.I. 1991/850, art. 3, **Sch.**
- F28** S. 183(1A)(a)(b) substituted (1.10.1992) for certain words by Criminal Justice Act 1991 (c. 53), s. 16, **Sch. 3**, Pt. II para. 7(2) (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.
- F29** Word inserted by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), s. 7(a)
- F30** Words in s. 183(4)(a) substituted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 61(1)(c)(i); S.I. 1991/850, art. 3, **Sch.**



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- F31** Word in s. 183(4)(a) substituted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 61(1)(c)(ii); S.I. 1991/850, art. 3, **Sch.**
- F32** Words added by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), s. 7(a)
- F33** Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 65(3)
- F34** S. 183(5A) inserted by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), s. 7(b)
- F35** Words in s. 183(5A) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 38(1)(a); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F36** Words in s. 183(5A)(a) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, ss. 38(1)(b), 117(2), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F37** Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 68(2), **Sch. 13 Pt. II para. 3**
- F38** S. 183(5B)(5C) inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 65(1)(2)(a)
- F39** Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), s.7(c) (substituting “(5) or (5A)” for “or (5)” is repealed by virtue of the Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(2), **Sch. 2** and for “or (5A)” there is substituted “(5A), (5B) or (5C)” by virtue of the Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 65(4)
- F40** S. 183(7): word “(a)” inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 70(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F41** Words in s. 183(a) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 70(b)**, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F42** S. 183(b) and the word “and” immediately preceding it inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 70(c)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

#### Modifications etc. (not altering text)

- C2** S. 183 amended by Licensed Premises (Exclusion of Certain Persons) Act 1980 (c. 32, SIF 68A:1, 2), s. 1(2)(c)

#### Marginal Citations

- M1** 1978 c. 49(39:1).  
**M2** 1978 c. 49(39:1).

## 184 Probation orders requiring treatment for mental condition.

- (1) Where the court is satisfied, on the evidence of a registered medical practitioner approved for the purposes of [F43section 20 or 39 of the M3Mental Health (Scotland) Act 1984], that the mental condition of an offender is such as requires and may be susceptible to treatment but is not such as to warrant his detention in pursuance of a hospital order under [F43Part VI of that Act], or under this Act, the court may, if it makes a probation order, include therein a requirement that the offender shall submit, for such period not extending beyond 12 months from the date of the requirement as may be specified therein, to treatment by or under the direction of a registered medical practitioner [F44or chartered psychologist]with a view to the improvement of the offender’s mental condition.
- (2) The treatment required by any such order shall be such one of the following kinds of treatment as may be specified in the order, that is to say—
  - (a) treatment as a resident patient in a hospital within the meaning of the [F45M4Mental Health (Scotland) Act 1984], not being a State hospital within the meaning of the Act;

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*Changes to legislation: Criminal Procedure (Scotland) Act 1975 is up to date with all changes known to be in force on or before 25 May 2023. 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) View outstanding changes*

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- (b) treatment as a non-resident patient at such institution or place as may be specified in the order; or
  - (c) treatment by or under the direction of such registered medical practitioner [<sup>F46</sup>or chartered psychologist]as may be specified in the order;
- but except as aforesaid the nature of the treatment shall not be specified in the order.
- (3) A court shall not make a probation order containing such a requirement as aforesaid unless it is satisfied that arrangements have been made for the treatment intended to be specified in the order, and, if the offender is to be treated as a resident patient, for his reception.
- (4) ..... <sup>F47</sup>
- <sup>F48</sup>(5) Where the medical practitioner [<sup>F46</sup>or chartered psychologist]by whom or under whose direction a probationer is receiving any of the kinds of treatment to which he is required to submit in pursuance of a probation order is of opinion—
- (a) that the probationer requires, or that it would be more appropriate for him to receive, a different kind of treatment (whether in whole or in part) from that which he has been receiving, being treatment of a kind which subject to subsection (5A) of this section could have been specified in the probation order; or
  - (b) that the treatment (whether in whole or in part) can be more appropriately given in or at a different institution or place from that where he has been receiving treatment in pursuance of the probation order,
- he may, subject to subsection (5B) of this section, make arrangements for the probationer to be treated accordingly.
- (5A) Arrangements made under subsection (5) of this section may provide for the probationer to receive his treatment (in whole or in part) as a resident patient in an institution or place notwithstanding that it is not one which could have been specified in that behalf in the probation order.
- (5B) Arrangements shall not be made under subsection (5) of this section unless—
- (a) the probationer and any officer responsible for his supervision agree;
  - (b) the treatment will be given by or under the direction of a registered medical practitioner [<sup>F46</sup>or chartered psychologist]who has agreed to accept the probationer as his patient; and
  - (c) where such treatment entails the probationer’s being a resident patient, he will be received as such.]
- (6) Where any such arrangements as are mentioned in [<sup>F49</sup>subsection (5) of this section] are made for the treatment of a probationer—
- (a) the [<sup>F50</sup>any officer responsible for the probationer’s supervision shall notify the appropriate court of the arrangements;] and
  - (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the probation order.
- (7) Subsections (2), (3) and (4) of section 176 of this Act shall apply for the purposes of this section as if for the reference in the said subsection (2) to section 175(1)(a) of this Act there were substituted a reference to subsection (1) of this section.
- (8) Except as provided by this section, a court shall not make a probation order requiring a probationer to submit to treatment for his mental condition.

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#### Textual Amendments

- F43** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(1), **Sch. 3 para. 29(a)**
- F44** Words in s. 184(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 39(1)(a); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F45** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(1), **Sch. 3 para. 29(b)**
- F46** Words in s. 184(2)(c)(5)(5B)(b) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 39(1)(b); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F47** S. 184(4) repealed by [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39, SIF 85\)](#), **Sch. 3**
- F48** S. 184(5)(5A)(5B) substituted for s. 184(5) by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\)](#), s. 36(2) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 126(2)(b)
- F49** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\)](#), s. 36(3)(a) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 126(2)(b)
- F50** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\)](#), s. 36(3)(b) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 126(2)(b)

#### Marginal Citations

- M3** 1984 c. 36(85).
- M4** 1984 c. 36(85).

### 185 Discharge and amendment of probation orders.

- (1) The provisions of Schedule 5 to this Act shall have effect in relation to the discharge and amendment of probation orders.
- (2) Where, under section 186 of this Act, a probationer is sentenced for the offence for which he was placed on probation, the probation order shall cease to have effect.

### 186 Failure to comply with requirement of probation order.

- (1) If, on information <sup>F51</sup> . . . from
  - <sup>F52</sup>(a) the officer supervising the probationer,
  - <sup>F53</sup>(b) the director of social work of the local authority whose officer is supervising the probationer; or
  - (c) an officer appointed by the director of social work to act on his behalf for the purposes of this subsection,]

it appears to the court by which the order was made or to the appropriate court that the probationer has failed to comply with any of the requirements of the order, that court may issue a warrant for the arrest of the probationer, or may, if it thinks fit, instead of issuing such a warrant in the first instance, issue a citation requiring the probationer to appear before the court at such time as may be specified in the citation.

- (2) If it is proved to the satisfaction of the court before which a probationer appears or is brought in pursuance of the last foregoing subsection that he has failed to comply with any of the requirements of the probation order, the court may—
  - (a) [<sup>F54</sup>except in the case of a failure to comply with a requirement to pay compensation and] without prejudice to the continuance in force of the probation order, impose a fine not exceeding [<sup>F55</sup>level 3 on the standard scale]; or

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- [<sup>F56</sup>(b) sentence the offender for the offence for which the order was made;]
- (c) vary any of the requirements of the probation order, so however that any extension of the probation period shall terminate not later than three years from the date of the probation order [<sup>F57</sup>; or
- (d) without prejudice to the continuance in force of the probation order, in a case where the conditions required by the <sup>M5</sup>Community Service by Offenders (Scotland) Act 1978 are satisfied, make a community service order, and the provisions of that Act shall apply to such an order as if the failure to comply with the requirement of the probation order were the offence in respect of which the order had been made.]

[<sup>F58</sup>(2A) for the purposes of subsection (2) above, evidence of one witness shall be sufficient evidence.]

- (3) A fine imposed under this section in respect of a failure to comply with the requirements of a probation order shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by or in respect of a conviction or a penalty imposed on a person summarily convicted.
- (4) A probationer who is required by a probation order to submit to treatment for his mental condition shall not be deemed for the purpose of this section to have failed to comply with that requirement on the ground only that he has refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances.
- (5) Without prejudice to the provisions of section 187 of this Act, a probationer who is convicted of an offence committed during the probation period shall not on that account be liable to be dealt with under this section for failing to comply with any requirement of the probation order.

#### Textual Amendments

- F51** Words in s. 186(1) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 71, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F52** S. 186(1) “(a)” inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), **s. 61(2)(a)**; S.I. 1991/850, art. 3, **Sch.**
- F53** S. 186(1)(b)(c) inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), **s. 61(2)(b)**; S.I. 1991/850, art. 3, **Sch.**
- F54** Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a)**, 65(5)
- F55** Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 56, **Sch. 7**
- F56** S. 186(2)(b) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 38(2)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F57** Word and s. 186(2)(d) added by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), **s. 8**
- F58** S. 186(2A) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(7)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 4(1)(c)

#### Marginal Citations

- M5** 1978 c. 49(39:1).

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## 187 Commission of further offence.

(1) If it appears to the court by which a probation order has been made (or to the appropriate court) that the probationer to whom the order relates has been convicted by a court in any part of Great Britain of an offence committed during the probation period and has been dealt with for that offence, the first-mentioned court (or the appropriate court) may issue a warrant for the arrest of the probationer, or may, if it thinks fit, instead of issuing a warrant in the first instance issue a citation requiring the probationer to appear before that court at such time as may be specified in the citation, and on his appearance or on his being brought before the court, the court may, if it thinks fit, deal with him under section 186(2)(b) of this Act.

(2) Where a probationer is convicted by the court which made the probation order (or by the appropriate court) of an offence committed during the probation period, that court may, if it thinks fit, deal with him under section 186(2)(b) of this Act for the offence for which the order was made as well as for the offence committed during the period of probation.

[<sup>F59</sup>(3) Where—

- (a) a court has, under section 183(5A) of this Act, included in a probation order a requirement that an offender shall perform unpaid work; and
- (b) the offender is convicted of an offence committed in the circumstances mentioned in subsection (4) below,

the court which sentences him for the offence shall, in determining the appropriate sentence for that offence, have regard to the fact that the offence was committed in those circumstances.

(4) The circumstances referred to in subsection (3) above are that the offence was committed—

- (a) during the period that the offender was subject to a requirement to perform unpaid work or within the period of three months following the expiry of that period; and
- (b) in any place where the unpaid work was being or had previously been performed.

(5) The court shall not, under subsection (3) above, have regard to the fact that the offence was committed in the circumstances mentioned in subsection (4) above unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.]

### Textual Amendments

**F59** S. 187(3)-(5) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 40(1); S.I. 1996/517, arts. 3(2), 4-6, Sch. 2

## 188 Probation orders relating to persons residing in England.

(1) Where the court by which a probation order is made under section 183 of this Act [<sup>F60</sup>(not being a probation order including a requirement [<sup>F61</sup>which, while corresponding to a requirement mentioned in paragraph 2 or 3 of Schedule 1A to the <sup>M6</sup>Powers of Criminal Courts Act 1973, would if included in a probation order made under that Act fail to accord with a restriction as to days of presentation, participation or attendance mentioned in paragraph 2(4)(a) or (6)(a), or as the case may be 3(3)(a), of that Schedule] )] is satisfied that the offender has attained the age of [<sup>F62</sup>16]years

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and resides or will reside in England, subsection (2) of the said section shall not apply to the order, but the order shall contain a requirement that he be under the supervision of a probation officer appointed for or assigned to the petty sessions area in which the offender resides or will reside; <sup>F63</sup>. . . that area shall be named in the order [<sup>F64</sup>; and where the order includes a requirement that the probationer perform unpaid work for a number of hours, the number specified shall not exceed one hundred.].

(2) Where a probation order has been made under section 183 of this Act and the court in Scotland by which the order was made or the appropriate court is satisfied

- [<sup>F65</sup>(a) that the probationer has attained the age of 16 years;  
 (b) that he proposes to reside, or is residing, in England; and  
 (c) that suitable arrangements for his supervision can be made by the probation committee for the area which contains the petty sessions area in which he resides or will reside]

, the power of that court to amend the order under Schedule 5 to this Act shall include power to insert the provisions required by subsection (1) of this section [<sup>F66</sup>or to vary any requirement for performance of unpaid work so that such hours as remain to be worked do not exceed one hundred]; and the court may so amend the order without summoning the probationer and without his consent.

(3) A probation order made or amended by virtue of this section may, notwithstanding section 184(8) of this Act, include a requirement that the probationer shall submit to treatment for his mental condition and—

- (a) subsections (1), (3) and (7) of the said section 184 and [<sup>F67</sup>paragraph 5(3) of Schedule 1A to] the <sup>M6</sup>Powers of Criminal Courts Act 1973 (all of which regulate the making of probation orders which include any such requirement) shall apply to the making of an order which includes any such requirement by virtue of this subsection as they apply to the making of an order which includes any such requirement by virtue of section 184 of this Act and [<sup>F67</sup>paragraph 5 of Schedule 1A to] the said Act of 1973 respectively; and  
 (b) [<sup>F68</sup>sub-paragraphs (5) to (7) of paragraph 5 of Schedule 1A to] the said Act of 1973 (functions of supervising officer and medical practitioner where such a requirement has been imposed) shall apply in relation to a probationer who is undergoing treatment in England in pursuance of a requirement imposed by virtue of this subsection as they apply in relation to a probationer undergoing such treatment in pursuance of a requirement imposed by virtue of that section.

(4) Sections 185(1) and 186(1) of this Act shall not apply to any order made or amended under this section; but subject as hereinafter provided the provisions of

[<sup>F69</sup>Schedule 2 to the Criminal Justice Act 1991 shall apply to the order—

- (a) except in the case mentioned in paragraph (b) below, as if that order were a probation order made under section 2 of the Powers of Criminal Courts Act 1973; and  
 (b) in the case of an order which contains a requirement such as is mentioned in subsection (5A) of section 183 or 384 of this Act, as if it were a combination order made under section 11 of the said Act of 1991:

Provided that Part III of that Schedule shall not so apply; and sub-paragraphs (3) and (4) of paragraph 3 of that Schedule shall so apply as if for the first reference in the said sub-paragraph (3) to the Crown Court there were substituted a reference to a court in Scotland and for the other references in those sub-paragraphs to the Crown Court there were substituted references to the court in Scotland.]

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- (5) If it appears on information to a justice acting for the petty sessions area [F70 named in a probation order made or amended under this section that the person to whom the order relates] has been convicted by a court in any part of Great Britain of an offence committed during the period specified in the order, he may issue a summons requiring that person to appear, at the place and time specified therein, before the court in Scotland by which the probation order was made or, if the information is in writing and on oath, may issue a warrant for his arrest, directing that person to be brought before the last-mentioned court.
- (6) If a warrant for the arrest of a probationer issued under section 187 of this Act by a court is executed in England, and the probationer cannot forthwith be brought before that court, the warrant shall have effect as if it directed him to be brought before a magistrates' court for the place where he is arrested; and the magistrates' court shall commit him to custody or release him on bail (with or without sureties) until he can be brought or appear before the court in Scotland.
- (7) The court by which a probation order is made or amended in accordance with the provisions of this section shall send three copies of the order to the clerk to the justices for the petty sessions area named therein, together with such documents and information relating to the case as it considers likely to be of assistance to the court acting for that petty sessions area.
- (8) Where a probation order which is amended under subsection (2) of this section is an order to which the provisions of this Act apply by virtue of section 10 of the M6 Powers of Criminal Courts Act 1973 (which relates to probation orders under that Act relating to persons residing in Scotland) then, notwithstanding anything in that section or this section, the order shall, as from the date of the amendment, have effect in all respects as if it were an order made under section 2 of that Act in the case of a person residing in England.

#### Extent Information

E1 S. 188(3)-(8) extends also to England and Wales see s. 463(1)(a)

#### Textual Amendments

- F60 Words inserted by Community Service by *Offenders (Scotland) Act 1978* (c. 49, SIF 39:1), **Sch. 2 para. 2**
- F61 Words in s. 188(1) substituted (1.10.1992) by *Criminal Justice Act 1991* (c. 53), s. 16, **Sch. 3**, Pt. II para. 7(3)(a)(i)(with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.
- F62 Word in s. 188(1) substituted (1.10.1992) by *Criminal Justice Act 1991* (c. 53), s. 16, **Sch. 3**, Pt. II para. 7(3)(a)(ii)(with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.
- F63 Word in s. 188(1) ceased to have effect (1.10.1992) by virtue of *Criminal Justice Act 1991* (c. 53), s. 16, **Sch. 3**, Pt. II para. 7(3)(a)(iii) (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.
- F64 Words in s. 188(1) added (1.10.1992) by *Criminal Justice Act 1991* (c. 53), s. 16, **Sch. 3**, Pt. II para. 7(3)(a)(iv) (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.
- F65 S. 188(2)(a)(b)(c) substituted (1.10.1992) for certain words by *Criminal Justice Act 1991* (c. 53), s. 16, **Sch. 3**, Pt. II para. 7(3)(b)(i) (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.
- F66 Words in s. 188(2) inserted (1.10.1992) by *Criminal Justice Act 1991* (c. 53), s. 16, **Sch. 3**, Pt. II para. 7(3)(b)(ii) (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.
- F67 Words in s. 188(3)(a) substituted (1.10.1992) by *Criminal Justice Act 1991* (c. 53), s. 16, **Sch. 3**, Pt. II para. 7(3)(c)(i) (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.
- F68 Words in s. 188(3)(b) substituted (1.10.1992) by *Criminal Justice Act 1991* (c. 53), s. 16, **Sch. 3**, Pt. II para. 7(3)(c)(ii) (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.

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**F69** S. 188(4)(a)(b) and proviso substituted (1.10.1992) for certain words by [Criminal Justice Act 1991 \(c. 53\)](#), s. 16, [Sch. 3, Pt. II para. 7\(3\)\(d\)](#) (with s. 28); S.I. 1992/333, art. 2(2), [Sch. 2](#).

**F70** Words in s. 188(5) substituted (1.10.1992) by [Criminal Justice Act 1991 \(c. 53\)](#), s. 16, [Sch. 3, Pt. II para. 7\(3\)\(e\)](#) (with s. 28); S.I. 1992/333, art. 2(2), [Sch. 2](#).

#### Marginal Citations

**M6** [1973 c. 62\(39:1\)](#).

**F71** **189** .....

#### Textual Amendments

**F71** S. 189 ceased to have effect (1.10.1992) by virtue of [Criminal Justice Act 1991 \(c. 53\)](#), s. 16, [Sch. 3, Pt. II para. 7\(4\)](#) (with s. 28); S.I. 1992/333, art. 2(2), [Sch. 2](#).

**F72** **190** .....

#### Textual Amendments

**F72** S. 190 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20](#), s. 117, [Sch. 6 Pt. I para. 72](#), [Sch. 7 Pt. I](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)

## 191 Effects of probation and absolute discharge.

- (1) Subject as hereinafter provided, a conviction of an offence for which an order is made . . . <sup>F73</sup> placing the offender on probation or discharging him absolutely shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of laying it before a court as a previous conviction in subsequent proceedings for another offence:

Provided that where an offender, being not less than 16 years of age at the time of his conviction of an offence for which he is placed on probation as aforesaid, is subsequently sentenced under this Act for that offence, the provisions of this subsection shall cease to apply to the conviction.

- (2) Without prejudice to the foregoing provisions of this section, the conviction of an offender who is placed on probation or discharged absolutely as aforesaid shall in any event be disregarded for the purposes of any enactment which imposes any disqualification or disability upon convicted persons, or authorises or requires the imposition of any such disqualification or disability.
- (3) The foregoing provisions of this section shall not affect—
- <sup>F74</sup>(a) any right to appeal;
  - (b) the operation, in relation to any such offender, of any enactment which was in force as at the commencement of section 9(3)(b) of the <sup>M7</sup>Criminal Justice (Scotland) Act 1949 and is expressed to extend to persons dealt with under section 1(1) of the <sup>M8</sup>Probation of Offenders Act 1907 as well as to convicted persons.



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- (4) Where a person charged with an offence has at any time previously been <sup>F75</sup> . . . discharged absolutely in respect of the commission by him of an offence it shall be competent, in the proceedings for that offence, to bring before the court the <sup>F75</sup> . . . order of absolute discharge in like manner as if the order were a conviction.

#### Textual Amendments

- F73** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 6 para. 1](#), [Sch. 8](#)  
**F74** [S. 191\(3\)\(a\)](#) substituted (27.7.1993) by [1993 c. 36, s. 79\(13\)](#), [Sch. 5 Pt. I para. 2\(3\)](#)  
**F75** Words in [s. 191\(4\)](#) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117, Sch. 6 Pt. I para. 73](#), [Sch. 7 Pt. I](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)

#### Modifications etc. (not altering text)

- C3** [S. 191](#) amended by [Licensed Premises \(Exclusion of Certain Persons\) Act 1980 \(c. 32, SIF 68A:1,2\)](#), [s. 1\(2\)\(c\)](#)  
**C4** [S. 191](#) excluded by [Road Traffic Offenders Act 1988 \(c. 53, SIF 107:1\)](#), [s. 46\(3\)](#)

#### Marginal Citations

- M7** [1949 c. 94.\(39:1\)](#).  
**M8** [1907 c. 17](#).

## 192 Probation reports.

Where a report by an officer of a local authority is made to any court <sup>F76</sup> . . . with a view to assisting the court in determining the most suitable method of dealing with any person in respect of an offence, a copy of the report shall be given by the clerk of the court to the offender or his solicitor:

<sup>F76</sup> . . .

#### Textual Amendments

- F76** [S. 192](#): words and proviso repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117, Sch. 6 Pt. I para. 74](#), [Sch. 7 Pt. I](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)

### *Penalties for statutory offences*

## 193 Power to mitigate penalties.

In proceedings in respect of the contravention of any statute or order, where each contravention involves any of the following punishments, namely, 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.:—

- (1) to reduce the period of imprisonment:

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- (2) to substitute for imprisonment (either with or without caution for good behaviour, not exceeding [<sup>F77</sup>the prescribed sum within the meaning of section 289B of this Act] and a period of 12 months) a fine . . . <sup>F78</sup>.
- (3) to substitute the finding of caution not exceeding [<sup>F77</sup>the prescribed sum within the meaning of section 289B of this Act] and the period of 12 months for a fine or imprisonment:
- (4) to reduce the amount of any fine:
- (5) 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.

#### Textual Amendments

**F77** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), s. 46\(2\)](#)

**F78** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), Sch. 6 para. 1, Sch. 8](#)

#### [<sup>F79</sup>193A] **Fines on conviction on indictment to be without limit.**

[ Where a person convicted on indictment of any offence (whether triable only on <sup>F80</sup>(1) indictment or triable either on indictment or summarily [<sup>F81</sup>other than by virtue of [<sup>F82</sup>section 457A(4) of this Act]) would, apart from this [<sup>F83</sup>subsection] be liable to a fine [<sup>F84</sup>of or] not exceeding a specified amount, he shall by virtue of this [<sup>F83</sup>subsection] be liable to a fine of any amount.]

[ Where any Act confers a power by subordinate instrument to make a person liable on <sup>F85</sup>(2) conviction on indictment of any offence mentioned in subsection (1) above to a fine or a maximum fine of a specified amount, or which shall not exceed a specified amount, the fine which may be provided in the exercise of that power shall by virtue of this subsection be a fine of an unlimited amount.]]

#### Textual Amendments

**F79** [S. 193A](#) inserted by [Criminal Law Act 1977 \(c. 45, SIF 39:1\), Sch. 11 para. 1](#)

**F80** Word inserted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), Sch. 15 para. 17\(a\)](#)

**F81** Words inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), Sch. 7 para. 37](#)

**F82** Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), Sch. 15 para. 17\(b\)](#)

**F83** Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), Sch. 15 para. 17\(d\)](#)

**F84** Words inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), Sch. 15 para. 17\(c\)](#)

**F85** [S. 193A\(2\)](#) inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), Sch. 15 para. 17\(e\)](#)

**Changes to legislation:** *Criminal Procedure (Scotland) Act 1975 is up to date with all changes known to be in force on or before 25 May 2023. 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) View outstanding changes*

#### Textual Amendments

- F86** S. 193B which was inserted by [Law Reform \(Miscellaneous Provisions\) Act 1985 \(c. 73, SIF 39:1\)](#), s.39, [Sch. 3 para. 1](#) is now repealed by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(2), [Sch. 2](#)

#### *Fines*

#### [<sup>F87</sup>194 Application of summary procedure provisions relating to fines.

- (1) The provisions of Part II of this Act specified in subsection (2) below shall, subject to any necessary modifications, apply in relation to solemn proceedings as they apply in relation to summary proceedings.
- (2) The provisions mentioned in subsection (1) above are—
  - section 395(1) (means of offender to be taken into account);
  - section 395A (power to remit fines);
  - section 396 (time for payment);
  - section 397 (further time for payment);
  - section 398 (reasons for default);
  - section 399 (payment by instalments);
  - section 400 (supervision pending payment of fine);
  - section 401(2) and (3) (supplementary provisions);
  - section 403 (transfer of fine orders);
  - section 404 (action of clerk of court on transfer of fine order);
  - section 406 (substitution of custody for imprisonment where child defaults on fine);
  - section 407 (maximum period of imprisonment for non-payment of fine);
  - section 408 (discharge from imprisonment to be specified);
  - section 409 (payment of fine in part by prisoner);
  - section 411 (recovery by civil diligence);
  - [<sup>F88</sup>section 412A (supervised attendance orders in place of fines for 16 and 17 year olds);
  - section 412B (supervised attendance orders where court allows further time to pay);
  - Schedule 7 (application of sums paid as part of fine under section 409).]

#### Textual Amendments

- F87** S. 194 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 47, [Sch. 6 para. 3](#)
- F88** Entries in s. 194(2) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 35\(9\)](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)

#### Modifications etc. (not altering text)

- C5** S. 194 amended by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. [7\(1\)](#), 47(4)(a)

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**195** ..... **F89**

**Textual Amendments**

**F89** Ss. 195, 197–202 repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 1, Sch. 8

**196 Fines, etc., may be enforced in other district.**

[<sup>F90</sup>(1)] Any sentence or decree for any fine or expenses pronounced by any sheriff court may be enforced against the person or effects of any party against whom any such sentence or decree shall have been awarded in any other sheriff court district, as well as in the district where such sentence or decree is pronounced:

<sup>F91</sup> . . .

[<sup>F92</sup>(2)] A fine imposed by the High Court shall be remitted for enforcement to, and shall be enforceable as if it had been imposed by—

- (a) where the person upon whom the fine was imposed resides in Scotland, the sheriff for the district where that person resides;
- (b) where that person resides outwith Scotland, the sheriff before whom he was brought for examination in relation to the offence for which the fine was imposed.]

**Textual Amendments**

**F90** Word inserted by virtue of [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 48, [Sch. 6 para. 3](#)

**F91** S. 196 proviso repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. 1 para. 75, [Sch. 7 Pt. I](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)

**F92** S. 196(2) inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 48, [Sch. 6 para. 3](#)

**Modifications etc. (not altering text)**

**C6** S. 196 applied by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), [ss. 7\(1\)](#), 16(3), 47(4)(a)

**C7** S. 196 extended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, [ss. 70\(2\)](#), 80(1), 113(1); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)

**197—** ..... **F93**  
**202.**

**Textual Amendments**

**F93** Ss. 195, 197–202 repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 1, Sch. 8

**203 Fines payable to H.M. Exchequer.**

Any fine imposed in the High Court upon the accused, and upon a juror for non-attendance, and any forfeiture for non-appearance of a party, witness or juror in the High Court shall be payable to and recoverable by the proper officer in Exchequer

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for Her Majesty’s use, unless in a case where the High Court shall, by the sentence awarding the said fine, order the same or any part thereof to be otherwise disposed of.

**Modifications etc. (not altering text)**

- C8** S. 203 applied by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), [ss. 7\(1\)](#), 16(3), 47(4)(a)
- C9** S. 203 extended by [Prevention of Terrorism \(Temporary Provisions\) Act 1989 \(c. 4, SIF 39:2\)](#), s. 13(8), [Sch. 4 para. 12\(4\)](#)
- C10** S. 203 amended (5.12.1996) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\)](#), [ss. 20\(4\)](#), 75; S.I. 1996/2894, art. 3, [Sch.](#)
- C11** S. 203 extended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, [ss. 70\(2\)](#), 80(1), 100, 113(1), [Sch. 3 para. 4\(4\)](#); S.I. 1996/517, [arts. 3\(2\)](#), 4-6, [Sch. 2](#)

**204** ..... <sup>F94</sup>

**Textual Amendments**

- F94** [Ss. 204, 208–211](#) repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 6 para. 5](#), [Sch. 8](#) and S.I. 1983/1580, [art. 3](#)

*Imprisonment, etc.*

[<sup>F95</sup>**205** **Punishment for murder.**

- (1) Subject to subsections (2) and (3) below, a person convicted of murder shall be sentenced to imprisonment for life.
- (2) Where a person convicted of murder is under the age of 18 years he shall not be sentenced to imprisonment for life but to be detained without limit of time and shall be liable to be detained in such place, and under such conditions, as the Secretary of State may direct.
- (3) Where a person convicted of murder has attained the age of 18 years but is under the age of 21 years he shall not be sentenced to imprisonment for life but to be detained in a young offenders institution and shall be liable to be detained for life.]

**Textual Amendments**

- F95** S. 205, 205A substituted for s. 205 by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [s. 43](#)

**205A Recommendation as to minimum period of detention for person convicted of murder.**

- (1) On sentencing any person convicted of murder a judge may make a recommendation as to the minimum period which should elapse before, under section [<sup>F96</sup>1(4) of the [Prisoners and Criminal Proceedings \(Scotland\) Act 1993](#)], the Secretary of State releases that person on licence.

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- (2) When making a recommendation under subsection (1) above, the judge shall state his reasons for so recommending.
- (3) Notwithstanding the proviso to subsection (1) of section 228 of this Act it shall be competent to appeal under paragraph (b) or (c) of that subsection against a recommendation made under subsection (1) above; and for the purposes of such appeal (including the High Court’s power of disposal under section 254(3)(b) of this Act) the recommendation shall be deemed part of the sentence passed on conviction.

**Textual Amendments**  
**F96** Words in s. 205A(1) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(8)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **art. 3(4)**

**[<sup>F97</sup>206 Detention of children convicted on indictment.**

- (1) Subject to section 205 of this Act, where a child is convicted and the court is of the opinion that no other method of dealing with him is appropriate, it may sentence him to be detained for a period which it shall specify in the sentence; and the child shall during that period be liable to be detained in such place and on such conditions as the Secretary of State may direct .

(2) ..... <sup>F98</sup>]

**Textual Amendments**  
**F97** S. 206 substituted for s. 206(1) by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(1), **Sch. 2 para. 12**  
**F98** S. 206(2)–(7) repealed by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(2), **Sch. 3**

**206A** ..... <sup>F99</sup>

**Textual Amendments**  
**F99** S. 206A which was inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 39:1), **s. 45(1)** is now repealed by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(2), **Sch. 3**

**[<sup>F100</sup>207 Detention of young offenders.**

- (1) It shall not be competent to impose imprisonment on a person under 21 years of age.
- (2) Subject to section 205(2) and (3) of this Act and to subsections (3) and (4) below a court may impose detention (whether by way of sentence or otherwise) on a person, who is not less than 16 but under 21 years of age, where but for subsection (1) above the court would have power to impose a period of imprisonment; and the period of detention imposed under this section on any person shall not exceed the maximum period of imprisonment which might otherwise have been imposed.

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(3) The court shall not under subsection (2) above impose detention on a person unless it is of the opinion that no other method of dealing with him is appropriate; and the court shall state its reasons for that opinion, and, except in the case of the High Court, those reasons shall be entered in the record of proceedings.

(4) To enable the court to form an opinion under subsection (3) above, it shall obtain (from an officer of a local authority or otherwise) such information as it can about the offender’s circumstances; and it shall also take into account any information before it concerning the offender’s character and physical and mental condition.

[ A sentence of detention imposed under this section shall be a sentence of detention <sup>F101</sup>(5) in a young offenders institution.]

<sup>F102</sup>(11) . . . . .]

**Textual Amendments**

**F100** S. 207 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), s. 45\(1\), Sch. 6 para. 5](#) and [S.I. 1983/1580 art. 3](#)

**F101** S. 207(5) substituted for s. 207(5)–(10) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\), s. 124\(1\)](#)

**F102** S. 207(11) repealed (1.10.1993) by [1993 c. 9, s. 47\(3\), Sch. 7 Pt. I \(with s. 47\(2\), Sch. 6 paras. 1, 2\); S.I. 1993/2050, art. 3\(4\)](#)

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**Modifications etc. (not altering text)**

**C12** S. 207 extended by [Contempt of Court Act 1981 \(c. 49, SIF 39:3\), s. 15\(3\)](#)

~~208~~ . . . . . <sup>F103</sup>  
211

**Textual Amendments**

**F103** ~~Ss. 204, 208–211~~ repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), Sch. 6 para. 5, Sch. 8](#) and [S.I. 1983/1580, art. 3](#)

<sup>F104</sup>212 . . . . .

**Textual Amendments**

**F104** S. 212 repealed (1.10.1993) by [1993 c. 9, s. 47\(3\), Sch. 7 Pt.I \(with s. 47\(2\), Sch. 6 paras. 1, 2\); S.I. 1993/2050, art. 3\(4\)](#)

[<sup>F105</sup>212A **Supervised release orders.**

(1) Where a person is convicted of an offence and is sentenced to imprisonment for a term of not less than twelve months but less than four years, the court on passing sentence may, if it considers that it is necessary to do so to protect the public from serious harm from the offender on his release, make such order as is mentioned in subsection (2) below.

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[ A court shall, before making an order under subsection (1) above, consider a report <sup>F106</sup>(1A) by a relevant officer of a local authority about the offender and his circumstances and, if the court thinks it necessary, hear that officer.]

(2) The order referred to in subsection (1) above (to be known as a “supervised release order”) is that the person, during a relevant period—

(a) be under the supervision either of a relevant officer of a local authority or of a probation officer appointed for or assigned to a petty sessions area (such local authority or the justices for such area to be designated under section 14(4) or 15(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993);

[ comply with—  
<sup>F107</sup>(b) (i) such requirements as may be imposed by the court in the order;] and  
(ii) such requirements as that officer may reasonably specify, [<sup>F108</sup>; and  
(c) comply with the standard requirements imposed by virtue of subsection (3) (a)(i) below]

for the purpose of securing the good conduct of the person or preventing, or lessening the possibility of, his committing a further offence (whether or not an offence of the kind for which he was sentenced).

(3) A supervised release order—

[ shall—  
<sup>F109</sup>(a) (i) without prejudice to subsection (2)(b) above, contain such requirements (in this section referred to as the “standard requirements”); and  
(ii) be as nearly as possible in such form, as may be prescribed by Act of Adjournal;]  
(b) for the purposes of any appeal or review constitutes part of the sentence of the person in respect of whom the order is made; and  
(c) shall have no effect during any period in which the person is subject to a licence under Part I of the said Act of 1993.

(4) Before making a supervised release order as respects a person the court shall explain to him, in as straightforward a way as is practicable, the effect of the order and the possible consequences for him of any breach of it.

(5) The clerk of the court by which a supervised release order is made in respect of a person shall—

(a) forthwith send a copy of the order to the person and to the Secretary of State; and  
(b) within seven days after the date on which the order is made, send to the Secretary of State such documents and information relating to the case and to the person as are likely to be of assistance to a supervising officer.

(6) In this section—

“relevant officer” has the same meaning as in Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993;

“relevant period” means such period as may be specified in the supervised release order, being a period—

(a) not exceeding twelve months after the date of the person’s release; and



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(b) no part of which is later than the date by which the entire term of imprisonment specified in his sentence has elapsed; and

“supervising officer” means, where an authority has or justices have been designated as is mentioned in subsection (2)(a) above for the purposes of the order, any relevant officer or, as the case may be, probation officer who is for the time being supervising for those purposes the person released.]

[<sup>F110</sup>(7) The foregoing provisions of this section apply to a person sentenced under section 207 or 415 of this Act as the provisions apply to a person sentenced to a period of imprisonment.]

**Textual Amendments**

- F105** S. 212A inserted (1.10.1993) by 1993 c. 9, **ss. 5, 6, 10, 14(1)** (with **ss. 5(1), 6(1), 10, 27, 47(2)**, Sch. 6 paras. 1, 2, 6, 7); S.I. 1993/2050, **art. 3(4)**
- F106** S. 212A(1A) inserted (S.) (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 36**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F107** S. 212A(2)(b)(i) substituted (S.) (3.2.1995) for s. 212A(b)(i) and the word “and” immediately preceding it by 1994 c. 33, **s. 132(a)(i)**; S.I. 1995/127, **art. 2(1), Sch. 1** (subject to transitional provisions in **art. 2(2)(3)**)
- F108** S. 212A(2)(c) and the word “and” immediately preceding it added (S.) (3.2.1995) by 1994 c. 33, **s. 132(a)(ii)**; S.I. 1995/127, **art. 2(1), Sch. 1** (subject to transitional provisions in **art. 2(2)(3)**)
- F109** S. 212A(3)(a) substituted (S.) (3.2.1995) by 1994 c. 33, **s. 132(b)**; S.I. 1995/127, **art. 2(1), Sch. 1** (subject to transitional provisions in **art. 2(2)(3)**)
- F110** S. 212A(7) added (27.7.1993) by 1993 c. 36, **s. 69**

**Modifications etc. (not altering text)**

- C13** S. 212A excluded (1.10.1993) by 1993 c. 9, **ss. 5, 6, 10, 14(2)** (with **ss. 5(1), 6(1), 10, 27, 47(2)**, Sch. 6 paras. 1, 2, 6, 7); S.I. 1993/2050, **art. 3(4)**  
S. 212A modified (1.10.1993) by 1993 c. 9, **s. 14(3)** (with **ss. 5(1), 6(1), 10, 27, 47(2)**, Sch. 6 paras. 1, 2, 6, 7); S.I. 1993/2050, **art. 3(4)**

**213** ..... <sup>F111</sup>

**Textual Amendments**

- F111** S. 213 repealed by **Prisons (Scotland) Act 1989** (c. 45, SIF 39:1), s. 45(2), **Sch. 3**

<sup>F112</sup>**214** .....

**Textual Amendments**

- F112** S. 214 repealed (1.10.1993) by 1993 c. 9, s. 47(3), **Sch. 7 Pt.I** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **art. 3(4)**

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### [<sup>F113</sup>215 Legal custody.

Any person required or authorised by or under this Act or [<sup>F114</sup>any other enactment or any subordinate instrument] to be taken to any place, or to be detained or kept in custody shall, while being so taken or detained or kept, be deemed to be in legal custody.]

#### Textual Amendments

**F113** S. 215 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 1, **Sch. 7 para. 39**

**F114** Words substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(1), **Sch. 1 para. 12**

*Miscellaneous provisions as to conviction, sentence, etc.*

### 216 Art and part guilt of statutory offence.

[<sup>F115</sup>(1)] A person may be convicted of, and punished for, contravention of any [<sup>F116</sup>enactment], notwithstanding that he was guilty of such contravention as art and part only.

[<sup>F117</sup>(2) Without prejudice to subsection (1) above or to any express provision in any enactment having the like effect to this subsection, any person who aids, abets, counsels, procures or incites any other person to commit an offence against the provisions of any enactment shall be guilty of an offence and shall be liable on conviction, unless the enactment otherwise requires, to the same punishment as might be imposed on conviction of the first-mentioned offence.]

#### Textual Amendments

**F115** S. 216 renumbered as s. 216(1) by virtue of [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 64(1)(2)

**F116** Word substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 64(1)(2)

**F117** S. 216(2) inserted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 64(1)(2)

### 217 Form of sentence.

- (1) In any case the sentence to be pronounced shall be announced by the judge in open court and shall be entered in the record in the form now in use in the High Court, and it shall not be necessary to read the entry of the sentence from the record.
- (2) In recording sentences of imprisonment, it shall be sufficient to minute the term of imprisonment to which the court sentenced the panel, without specifying the prison in which the sentence is to be carried out; and such entries of sentences, signed by the clerk of court, shall be full warrant and authority for all execution to follow thereon, and for the clerk to issue extracts thereof for carrying the same into execution or otherwise.
- (3) In extracting sentences of imprisonment, the extract may be in the form set out in an Act of Adjournal under this Act or as nearly as may be in such form.

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## [<sup>F118</sup>217] Sentence following guilty plea.

In determining what sentence to pass on, or what other disposal or order to make in relation to, an offender who has pled guilty to an offence, a court may take into account—

- (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and
- (b) the circumstances in which that indication was given.]

### Textual Amendments

**F118** S. 217A inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 33; S.I. 1996/517, arts. 3(2), 4-6, Sch. 2

## 218 Consideration of time spent in custody.

[<sup>F119</sup>(1)] A court, in passing a sentence of imprisonment or detention . . . <sup>F120</sup> on a person for any offence, shall

- [<sup>F121</sup>(a)] in determining the period of imprisonment or detention, have regard to any period of time spent in custody by that person on remand awaiting trial or sentence [<sup>F122</sup> or spent in custody awaiting extradition to the United Kingdom;
- (b) specify the date of commencement of the sentence; and
- (c) if that person—
  - (i) has spent a period of time in custody on remand awaiting trial or sentence; or
  - (ii) is an extradited prisoner for the purposes of this section, and the date specified under paragraph (b) above is not earlier than the date on which sentence is passed, state its reasons for not specifying an earlier date.]

[<sup>F123</sup>(2)] A prisoner is an extradited prisoner for the purposes of this section if—

- (a) he was tried for the offence in respect of which his sentence of imprisonment was imposed—
    - (i) after having been extradited to the United Kingdom; and
    - (ii) without having first been restored to the state from which extradited or having had an opportunity of leaving the United Kingdom; and
  - (b) he was for any period kept in custody while awaiting such extradition.
- (3) In this section “extradited to the United Kingdom” means returned to the United Kingdom—
- (a) in pursuance of extradition arrangements (as defined in section 3 of the Extradition Act 1989);
  - (b) under any law which corresponds to that Act and is a law of a designated Commonwealth country (as defined in section 5(1) of that Act);
  - (c) under that Act as extended to a colony or under any corresponding law of a colony; or
  - [<sup>F124</sup>(cc)] in pursuance of arrangements with a foreign state in respect of which an Order in Council under section 2 of the Extradition Act 1870 is in force;]
  - (d) in pursuance of a warrant of arrest endorsed in the Republic of Ireland under the law of that country corresponding to the Backing of Warrants (Republic of Ireland) Act 1965.]

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#### Textual Amendments

- F119** S. 218 renumbered s. 218(1) (18.9.1993) by 1993 c. 9, s. 41(4) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), Sch. 2
- F120** Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 8 and S.I. 1983/1580, art. 3
- F121** Word in s. 218 inserted (18.9.1993) by 1993 c. 9, s. 41(2) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), Sch. 2
- F122** Words in s. 218 inserted (18.9.1993) by 1993 c. 9, s. 41(3) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), Sch. 2
- F123** S. 218(2)(3) inserted (18.9.1993) by 1993 c. 9, s. 41(5) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), Sch. 2
- F124** S. 218(3)(cc) inserted (3.2.1995) by 1994 c. 33, s. 168(1), Sch. 9 para. 48(2); S.I. 1995/127, art. 2(1), Sch. 1 Appendix A (subject to transitional provisions in art. 2(2)(3))

### 219 Deferred sentence.

[<sup>F125</sup>(1)] It shall be competent for a court to defer sentence after conviction for a period and on such conditions as the court may determine.

[<sup>F126</sup>(2) If it appears to the court by which sentence on a person has been deferred under subsection (1) above that that person has been convicted, during the period of deferment, by a court in any part of Great Britain of an offence committed during that period and has been dealt with for that offence, the first mentioned court may issue a warrant for the arrest of that person, or may, instead of issuing such a warrant in the first instance, issue a citation requiring him to appear before it at such time as may be specified in the citation; and on his appearance or on his being brought before the court it may deal with him in any manner in which it would be competent for it to deal with him on the expiry of the period of deferment.

(3) Where a court which has deferred sentence under subsection (1) above on a person convicts that person of another offence during the period of deferment, it may deal with him for the original offence in any manner in which it would be competent for it to deal with him on the expiry of the period of deferment, as well as for the offence committed during the said period.]

#### Textual Amendments

- F125** Word inserted by virtue of Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 54
- F126** S. 219(2) inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 54

### 220 Capital sentence not competent under this Act.

A capital sentence shall not be competent under this Act.

### 221 No penal servitude or hard labour.

(1) No person shall be sentenced by a court to penal servitude; and every enactment conferring power on a court to pass a sentence of penal servitude in any case shall be construed as conferring power to pass a sentence of imprisonment for a term not

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**Changes to legislation:** *Criminal Procedure (Scotland) Act 1975 is up to date with all changes known to be in force on or before 25 May 2023. 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) View outstanding changes*

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exceeding the maximum term of penal servitude for which a sentence could have been passed in that case immediately before 12th June 1950:

Provided that nothing in this subsection shall be construed as empowering a court, other than the High Court, to pass a sentence of imprisonment for a term exceeding [<sup>F127</sup>three years].

- (2) No person shall be sentenced by a court to imprisonment with hard labour; and every enactment conferring power on a court to pass a sentence of imprisonment with hard labour in any case shall be construed as conferring power to pass a sentence of imprisonment for a term not exceeding the term for which a sentence of imprisonment with hard labour could have been passed in that case immediately before 12th June 1950; and so far as any enactment requires or permits prisoners to be kept to hard labour it shall cease to have effect.

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**Textual Amendments**

**F127** Words substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a), 58(3)**

**222 No fees exigible.**

No fees or expenses of any description shall be exigible by the clerk or other officer of court from any person on whom an indictment shall have been served, unless the same shall form part of the sentence of the court; but the fees exigible from the prosecutor by such clerk or officer shall not be affected by the provisions of this section.

<sup>F128</sup>**223** .....

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**Textual Amendments**

**F128** [S. 223](#) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117, Sch. 6 Pt. I para. 181\(2\)](#), **Sch. 7 Pt. I**; [S.I. 1996/517, arts. 3\(2\), 4-6](#), **Sch. 2**

<sup>F129</sup>**223A Disqualification in Scotland where vehicle used to commit offence.**

- (1) Where a person is convicted of an offence (other than one triable only summarily) and the court which passes sentence is satisfied that a motor vehicle was used for the purpose of committing, or facilitating the commission of that offence, the court may order him to be disqualified for such period as the court thinks fit from holding or obtaining a licence to drive a motor vehicle granted under Part III of the Road Traffic Act 1988.
- (2) A court which makes an order under this section disqualifying a person from holding or obtaining a licence shall require him to produce any such licence held by him and its counterpart.
- (3) Any reference in this section to facilitating the commission of an offence shall include a reference to the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.

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- (4) In relation to licences which came into force before 1st June 1990, the reference in subsection (2) above to the counterpart of a licence shall be disregarded.]

**Textual Amendments**

**F129** S. 223A inserted (1.7.1992) by [Road Traffic Act 1991 \(c.40\), s. 39](#); S.I. 1992/1286, art. 2, [Sch.](#)

**224 Warrant of search for forfeited articles.**

Where a court has made an order for the forfeiture of an article, the court or any justice may, if satisfied on information on oath—

- (a) that there is reasonable cause to believe that the article is to be found in any place or premises; and
- (b) that admission to the place or premises has been refused or that a refusal of such admission is apprehended,

issue a warrant of search which may be executed according to law.

<sup>F130</sup>225 .....

**Textual Amendments**

**F130** Ss. 225, 226, 227 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, [Sch. 6 Pt. I para. 76](#), [Sch. 7 Pt. I](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)

<sup>F131</sup>226 .....

**Textual Amendments**

**F131** Ss. 225, 226, 227 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, [Sch. 6 Pt. I para. 76](#), [Sch. 7 Pt. I](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)

<sup>F132</sup>227 .....

**Textual Amendments**

**F132** Ss. 225, 226, 227 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, [Sch. 6 Pt. I para. 76](#), [Sch. 7 Pt. I](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)

[<sup>F133</sup>227A**Correction of entries.**

- (1) Subject to the provisions of this section, it shall be competent to correct an entry in—

- (a) the record of proceedings in a solemn prosecution; or
- (b) the extract of a sentence passed or an order of court made in such proceedings,

in so far as that entry constitutes an error of recording or is incomplete.

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- (2) Such entry may be corrected—
- (a) by the clerk of the court, at any time before either the sentence (or order) of the court is executed or, on appeal, the proceedings are transmitted to the Clerk of Justiciary;
  - (b) by the clerk of the court, under the authority of the court which passed the sentence or made the order, at any time after the execution of the sentence (or order) of the court but before such transmission as is mentioned in paragraph (a) above; or
  - (c) by the clerk of the court under the authority of the High Court in the case of a remit under subsection (4)(b) below.
- (3) A correction in accordance with paragraph (b) or (c) of subsection (2) above shall be intimated to the prosecutor and to the former accused or his solicitor.
- (4) Where, during the course of an appeal, the High Court becomes aware of an erroneous or incomplete entry, such as is mentioned in subsection (1) above, the court—
- (a) may consider and determine the appeal as if such entry were corrected; and
  - (b) either before or after the determination of the appeal, may remit the proceedings to the court of first instance for correction in accordance with subsection (2)(c) above.
- (5) Any correction under subsections (1) and (2) above by the clerk of the court shall be authenticated by his signature and, if such correction is authorised by a court, shall record the name of the judge or judges authorising such correction and the date of such authority.]

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**Textual Amendments**

**F133** S. 227A inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 54

**Changes to legislation:**

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[View outstanding changes](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act certain function transferred. by [1994 c. 39 s. 127\(1\)128](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 168(c)(ii) amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(6\)\(b\)](#)
- s. 364(c)(ii) amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(14\)\(b\)](#)
- s. 413(3) (defn. of "the appropriate local authority") para. (a)(b) amended by [1994 c. 39 Sch. 13 para. 97\(5\)](#)
- s. 413(3) (defns. of "care" and "the 1968 Act") repealed (prosp.) by [1995 c. 36 s. 105\(4\)\(5\)Sch. 4 para. 24\(17\)\(b\)\(i\)Sch. 5](#)
- s. 462 (defns. of "child" "children's hearing" "place of safety" "residential establishment" and "supervision requirement") amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(18\)](#)
- s. 462 (defns. of "crime" and "prosecutor") applied (prosp.) by [1995 c. 36 s. 53\(7\)](#)