



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PART II

SUMMARY PROCEDURE

Procedure at trial involving children

361 Child under 14 not to be in court during trial of another person.

No child under 14 years of age (other than an infant in arms) shall be permitted to be present in court during the trial of any other person charged with an offence, or during any proceedings preliminary thereto, except during such time as his presence is required as a witness or otherwise for the purposes of justice; and any child present in court when under this section he is not to be permitted to be so shall be ordered to be removed:

Provided that this section shall not apply to messengers, clerks, and other persons required to attend at any court for purposes connected with their employment.

362 Power to clear court while child is giving evidence in certain cases.

(1) Where, in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, a person who, in the opinion of the court, is a child is called as a witness, the court may direct that all or any persons, not being:

- [^{F1}(a) members or officers of the court;
 - (b) parties to the case before the court, their counsel or solicitors or persons otherwise directly concerned in the case;
 - (c) bona fide representatives of news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings; or
 - (d) such other persons as the court may specially authorise to be present,
- shall be excluded from the court during the taking of the evidence of that witness.]

Changes to legislation: Criminal Procedure (Scotland) Act 1975, Cross Heading: Procedure at trial involving children is up to date with all changes known to be in force on or before 10 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

Provided that nothing in this section shall authorise the exclusion of bona fide representatives of a newspaper or news agency.

- (2) The powers conferred on a court by this section shall be in addition and without prejudice to any other powers of the court to hear proceedings in camera.

Textual Amendments

- F1** S. 362(1)(a)-(d) and words substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) for words by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 64**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

363 Power to proceed with case in absence of person under 17.

Where, in any proceedings relating to any of the offences mentioned in Schedule 1 to this Act, the court is satisfied that the attendance before the court of any person under the age of 17 years in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of that person.

364 Power of court, in respect of certain offences against a child, to refer child to [^{F2}Principal Reporter].

Any court by or before which a person is convicted of having [^{F3}committed any offence—

- (a) under section 21 of the ^{M1}Children and Young Persons (Scotland) Act 1937;
- (b) mentioned in Schedule 1 to this Act; or
- (c) in respect of a female person aged 17 years or over which constitutes the crime of incest,

may refer—

- (i) the child in respect of whom the offence referred to in paragraph (a) or (b) above has been committed; or
- (ii) any child who is, or who is likely to become, a member of the same household as the person who has committed the offence mentioned in paragraph (b) or (c) above,

to the [^{F4}Principal Reporter]] of the local authority in whose area the child resides and certify that the said offence shall be a ground established for the purposes of Part III of the ^{M2}Social Work (Scotland) Act 1968.

Textual Amendments

- F2** Words in sidenote to s. 364 substituted (1.4.1996) by 1994 c. 39, ss. 180(1), 184(2), **Sch. 13 para. 97(8)**; S.I. 1996/323, **art. 4(1)(c)**
- F3** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 57**
- F4** Words in s. 364 substituted (1.4.1996) by 1994 c. 39, ss. 180(1), 184(2), **Sch. 13 para. 97(2)(a)**; S.I. 1996/323, **art. 4(1)(c)**

Marginal Citations

- M1** 1937 c. 37(20).

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M2 1968 c. 49(81:3).

365 F5

Textual Amendments

F5 S. 365 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 8

366 Procedure when sheriff sits summarily in respect of offence by child.

- (1) Where summary proceedings are brought in respect of an offence alleged to have been committed by a child, the sheriff shall sit either in a different building or room from that in which he usually sits or on different days from those on which other courts in the building are engaged in criminal proceedings: and no person shall be present at any sitting to which this subsection applies except—
- (a) members and officers of the court;
 - (b) parties to the case before the court, their solicitors and counsel, and witnesses and other persons directly concerned in that case;
 - (c) bona fide representatives of [^{F6}news gathering or reporting organisations present for the purpose of contemporaneous reports of the proceedings];
 - (d) such other persons as the court may specially authorise to be present.

^{F7}(2)

Textual Amendments

F6 Words in s. 366(1)(c) 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. 131(a); S.I. 1996/517, arts. 3(2), 4-6, Sch. 2

F7 S. 366(2) 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. 131(b), Sch. 7 Pt. I; S.I. 1996/517, arts. 3(2), 4-6, Sch. 2

367 Powers of sheriff sitting summarily.

- (1) A sheriff sitting summarily for the purpose of hearing a charge against, or an application relating to, a person who is believed to be a child may, if he thinks fit to do so, proceed with the hearing and determination of the charge or application, notwithstanding that it is discovered that the person in question is not a child.
- (2) When a sheriff sitting summarily has remanded a child for information to be obtained with respect to him, any sheriff sitting summarily in the same place—
- (a) may in his absence extend the period for which he is remanded so, however that he appears before a sheriff or a justice at least once in every two days;
 - (b) when the required information has been obtained, may deal with him finally; and where the sheriff by whom he was originally remanded has recorded a finding that he is guilty of an offence charged against him, it shall not be necessary for any court which subsequently deals with him under this subsection to hear evidence as to

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the commission of that offence, except in so far as it may consider that such evidence will assist the court in determining the manner in which he should be dealt with.

- (3) Any direction in any enactment that a charge shall be brought before a juvenile court shall be construed as a direction that he shall be brought before the sheriff sitting as a court of summary jurisdiction, and no such direction shall be construed as restricting the powers of any justice or justices to entertain an application for bail or for a remand, and to hear such evidence as may be necessary for that purpose.

368 Presumption and determination of age of child.

- (1) Where a person charged with an offence is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a child, the court shall make due inquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case, but an order or judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court, and the age presumed or declared by the court to be the age of the person so brought before it shall, for the purposes of this Act or the ^{M3}Children and Young Persons (Scotland) Act 1937, be deemed to be the true age of that person, and, where it appears to the court that the person so brought before it has attained the age of 17 years, that person shall for the purposes of this Act or the ^{M4}Children and Young Persons (Scotland) Act 1937 be deemed not to be a child.
- (2) The court in making any inquiry in pursuance of the foregoing subsection shall have regard to the application of the provisions of section 30(1) of the ^{M5}Social Work (Scotland) Act 1968 but an order or judgment of the court shall not be invalidated by any subsequent proof that the court was not informed that at the material time the person was subject to a supervision requirement or that his case had been referred to a children's hearing under Part V of that Act.
- (3) Where in any complaint in respect of any offence under the ^{M6}Children and Young Persons (Scotland) Act 1937 or any of the offences mentioned in [^{F8}paragraphs [^{F9}(c)] [^{F10}(d) and (e)] of Schedule 1 to this Act or any offence under section [^{F11}2A,] 11(1) to (3) or 14 of the ^{M7}Sexual Offences (Scotland) Act 1976], it is alleged that the person by or in respect of whom the offence was committed was a child or was under or had attained any specified age, and he appears to the court to have been at the date of the commission of the alleged offence a child, or to have been under or to have attained the specified age, as the case may be, he shall for the purposes of this Act or the ^{M8}Children and Young Persons (Scotland) Act 1937 [^{F8}or the ^{M9}Sexual Offences (Scotland) Act 1976 be presumed] at that date to have been a child or to have been under or to have attained that age, as the case may be, unless the contrary is proved.
- (4) Where, in any complaint in respect of any offence under the ^{M10}Children and Young Persons (Scotland) Act 1937 or any of the offences mentioned in Schedule 1 to this Act, it is alleged that the person in respect of whom the offence was committed was a child or was a young person, it shall not be a defence to prove that the person alleged to have been a child was a young person or the person alleged to have been a young person was a child in any case where the acts constituting the alleged offence would equally have been an offence if committed in respect of a young person or child respectively.
- (5) Where a person is charged with an offence under the ^{M11}Children and Young Persons (Scotland) Act 1937 in respect of a person apparently under a specified age, it shall be a defence to prove that the person was actually of or over that age.

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- (6) In subsection (3) of this section, references to a child (other than a child charged with an offence) shall be construed as references to a child under the age of 17 years; but except as aforesaid references in this section to a child shall be construed as references to a child within the meaning of section 462 of this Act.

Textual Amendments

- F8** Words substituted by [Sexual Offences \(Scotland\) Act 1976 \(c. 67, SIF 39:5\)](#), **Sch. 1**
- F9** Words “(c) and” substituted by virtue of the [Incest and Related Offences \(Scotland\) Act 1986 \(c. 36, SIF 39:5\)](#), s. 3(2), **Sch. 1 para. 3**
- F10** Words “(d) and (e)” substituted for words “and (d)” by virtue of the [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, **Sch. 8 para. 16**, **Sch. 15 para. 48**
- F11** Words inserted by [Incest and Related Offences \(Scotland\) Act 1986 \(c. 36, SIF 39:5\)](#), s. 3(2), **Sch. 1 para. 3**

Marginal Citations

- M3** 1937 c. 37(20).
- M4** 1937 c. 37(20).
- M5** 1968 c. 49(81:3).
- M6** 1937 c. 37(20).
- M7** 1976 c. 67(39:5).
- M8** 1937 c. 37(20).
- M9** 1976 c. 67(39:5).
- M10** 1937 c. 37(20).
- M11** 1937 c. 37(20).

369 Age of criminal responsibility.

It shall be conclusively presumed that no child under the age of eight years can be guilty of any offence.

370 Child charged jointly with person who is not a child.

When a child has been charged with an offence jointly with a person who is not a child the provisions of sections 366 [^{F12}and 367] of this Act shall not apply to summary proceedings before the sheriff in respect of the charges.

Textual Amendments

- F12** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **Sch. 7 para. 58**

371 Welfare of child.

Every court in dealing with a child who is brought before it as an offender shall have regard to the welfare of the child and shall in a proper case take steps for removing him from undesirable surroundings.

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372 Reference and remit of children’s cases by courts to children’s hearings.

- (1) Where a child who is not subject to a supervision requirement is charged with an offence and pleads guilty to, or is found guilty of, that offence the court—
 - (a) instead of making an order on that plea or finding, may remit the case to the [F13Principal Reporter] to arrange for the disposal of the case by a children’s hearing; or
 - (b) on that plea or finding may request the [F13Principal Reporter] to arrange a children’s hearing for the purposes of obtaining their advice as to the treatment of the child.
- (2) Where a court has acted in pursuance of paragraph (b) of the foregoing subsection, the court, after consideration of the advice received from the children’s hearing may, as it thinks proper, itself dispose of the case or remit the case as aforesaid.
- (3) Where a child who is subject to a supervision requirement is charged with an offence and pleads guilty to, or is found guilty of, that offence the court shall request the [F13Principal Reporter] to arrange a children’s hearing for the purpose of obtaining their advice as to the treatment of the child, and on consideration of that advice may, as it thinks proper, itself dispose of the case or remit the case as aforesaid.
- (4) Where a court has remitted a case to the [F14Principal Reporter] under this or the next following section, the jurisdiction of the court in respect of the child or person shall cease, and his case shall stand referred to a children’s hearing.
- (5) Nothing in the provisions of this or the next following section shall apply to a case in respect of an offence the sentence for which is fixed by law.

Textual Amendments

- F13** Words in s. 372(1)(a)(b)(3) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 97(2)(b)**; S.I. 1996/323, **art. 4(1)(b)(c)**
- F14** Words in s. 372(4) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 97(8)**; S.I. 1996/323, **art. 4(1)(b)(c)**

373 Reference and remit of cases of certain young persons by courts to children’s hearings.

Where a person who is not subject to a supervision requirement but is a person over the age of 16, and is not within six months of attaining the age of 18, is charged summarily with an offence and pleads guilty to, or has been found guilty of, that offence the court on that plea or finding may request the [F15Principal Reporter] to arrange a children’s hearing for the purpose of obtaining their advice as to the treatment of the person, and on consideration of that advice, the court may, as it thinks proper, itself dispose of the case or, where the hearing have so advised, remit the case to the [F15Principal Reporter] for the disposal of the case by a children’s hearing.

Textual Amendments

- F15** Words in s. 373 substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 97(2)(b)**; S.I. 1996/323, **art. 4(1)(b)(c)**

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[^{F16}374 Restrictions on report of proceedings involving person under 16.

(1) No newspaper report of any proceedings in a court shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any person under the age of 16 years concerned in the proceedings, either—

- (a) as being a person against or in respect of whom the proceedings are taken; or
- (b) as being a witness therein;

nor shall any picture which is, or includes, a picture of a person under the age of 16 years so concerned in the proceedings be published in any newspaper in a context relevant to the proceedings:

Provided that, in any case—

- (i) where the person is concerned in the proceedings as a witness only and no one against whom the proceedings are taken is under the age of 16 years, the foregoing provisions of this subsection shall not apply unless the court so directs;
- (ii) the court may at any stage of the proceedings if satisfied that it is in the public interest so to do, direct that the requirements of this section (including such requirements as applied by a direction under paragraph (i) above) shall be dispensed with to such extent as the court may specify;
- (iii) the Secretary of State may, after completion of the proceedings, if so satisfied by order dispense with the said requirements to such extent as may be specified in the order.

(2) This section shall, with the necessary modifications, apply in relation to sound and television [^{F17}programmes included in a programme service (within the meaning of the Broadcasting Act 1990)] as it applies in relation to newspapers.

(3) A person who publishes matter in contravention of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding [^{F18}level 4 on the standard scale.]

(4) In this section, references to a court shall not include a court in England, Wales or Northern Ireland.]

Textual Amendments

F16 S. 374 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 22, **Sch. 6 para. 2**

F17 Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1), **Sch. 20 para. 21**

F18 Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 46, (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289G and (N.I.) 1984/703, (N.I. 13), art. 5

Changes to legislation:

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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\(7\)](#)