Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

An Act to consolidate certain enactments relating to criminal procedure in Scotland.

[8th May 1975]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

SOLEMN PROCEDURE

Jurisdiction

Application of Part I of this Act.

1. This Part of this Act shall apply to solemn proceedings in respect of any crime or offence which might, prior to the passing of this Act, or which may under the provisions of this or any Act, whether passed before or after the passing of this Act, be tried on indictment or criminal letters.

Jurisdiction and powers of courts of solemn jurisdiction.

2.—(1) The jurisdiction and powers of all courts of solemn jurisdiction, except in so far as the same may be altered or modified by any future Act, shall remain as at the commencement of this Act.

(2) The sheriff shall, without prejudice to any other or wider power conferred by statute, not be entitled, on the conviction on indictment of an accused person, to pass a sentence of imprisonment for a term exceeding two years.

PART I
Jurisdiction of sheriff.

3.—(1) Subject to the provisions of this section, the jurisdiction of the sheriffs, within their respective sheriffdoms shall extend to and include all navigable rivers, ports, harbours, creeks, shores and anchoring grounds in or adjoining such sheriffdoms and shall include all criminal maritime causes and proceedings (including such as may apply to persons furth of Scotland) provided the accused shall upon any legal ground of jurisdiction be subject to the jurisdiction of the sheriff before whom such cause or proceeding may be raised.

(2) It shall not be competent to the sheriff to try any crime committed on the seas which it would not be competent for him to try if the crime had been committed on land.

(3) Where sheriffdoms are separated by a river, firth or estuary, the sheriffs on either side shall have concurrent jurisdiction over the intervening space occupied by water.

Boundaries of jurisdiction.

4.—(1) Where an offence is committed in any harbour, river, arm of the sea or other water (tidal or otherwise) which runs between or forms the boundary of the jurisdiction of two or more courts, such offence may be tried by any one of such courts.

(2) Where an offence is committed on the boundary of the jurisdiction of two or more courts, or within the distance of 500 yards of any such boundary, or partly within the jurisdiction of one court and partly within the jurisdiction of another court or courts, such offence may be tried by any one of such courts.

(3) Where an offence is committed on any person or in respect of any property in or upon any carriage, cart or vehicle employed in a journey by road or railway, or on board any vessel employed in a river, lake, canal or inland navigation, such offence may be tried by any court through whose jurisdiction such carriage, cart, vehicle or vessel passed in the course of the journey or voyage during which the offence was committed, and, where the side, bank, centre or other part of the road, railway, river, lake, canal or inland navigation along which the carriage, cart, vehicle or vessel passed in the course of such journey or voyage is the boundary of the jurisdiction of two or more courts, such offence may be tried by any one of such courts.

(4) Where several offences, which if committed in one sheriff court district could be tried under one indictment, are alleged to have been committed by any person in different sheriff court districts, the accused may be tried for all or any of those offences under one indictment before the sheriff of any one of such sheriff court districts.

PART I

(5) Where an offence is authorised by this section to be tried by any court, it may be dealt with, heard, tried, determined, adjudged and punished as if the offence had been committed wholly within the jurisdiction of such court.

Procedure in case of crime in different districts.

5.—(1) Where a person is alleged to have committed in more than one sheriff court district a crime or crimes to which subsection (2) of this section applies, he may be indicted to a court to be held in such one of such sheriff court districts as shall be determined by the Lord Advocate, whether that court is the High Court or the sheriff court.

(2) This subsection applies to—

(*a*) a crime committed partly in one sheriff court district and partly in another;

(*b*) crimes connected with each other but committed in different sheriff court districts;

(*c*) crimes committed in different sheriff court districts in succession which, if they had been committed in one such district, could have been tried under one indictment.

(3) Where, in accordance with the provisions of this section, a case is tried in the sheriff court of any sheriff court district, the procurator fiscal of that district shall have power to prosecute in that case and the sheriff of that district shall have power to try the case and to pronounce sentence on conviction even if the crime in question has in whole or in part been committed in a different district.

(4) The sheriff and procurator fiscal referred to in subsection (3) of this section shall have the like powers in relation to the case in question, whether before, during or after the trial, as they respectively have in relation to a case arising out of a crime or crimes committed wholly within their own district.

Jurisdiction and procedure in respect of certain indictable offences committed abroad.

6.—(1) Any British subject who in a country outside the United Kingdom does any act or makes any omission which if done or made in Scotland would constitute the crime of murder or of culpable homicide shall be guilty of the same crime and subject to the same punishment as if the act or omission had been done or made in Scotland.

(2) Any British subject employed in the service of the Crown who, in a foreign country, when acting or purporting to act in the course of his employment, does any act or makes any omission which if done or made in Scotland would constitute

PART I

an offence punishable on indictment shall be guilty of the same offence, and subject to the same punishment, as if the act or omission had been done or made in Scotland.

(3) A person may be proceeded against, indicted, tried and punished for an offence under this section in any sheriff court district in Scotland in which he is apprehended or is in custody as if the offence had been committed in that district, and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in that district.

Theft outside Scotland.

7.—(1) Any person who has in his possession in Scotland property which he has stolen in any other part of the United Kingdom may be dealt with, indicted, tried and punished in Scotland in like manner as if he had stolen it in Scotland.

(2) Any person who in Scotland receives property stolen in any other part of the United Kingdom may be dealt with, indicted, tried and punished in Scotland in like manner as if it had been stolen in Scotland.

Trial of certain crimes and offences in sheriff court.

8.—(1) Without prejudice to any other power to indict crimes in the sheriff court, it shall be lawful to indict in the sheriff court persons accused of any of the following crimes:—

(*a*) the crime of uttering a forged document;

(*b*) the crime of robbery;

(*c*) the crime of wilful fire-raising;

(*d*) any of the crimes of going armed by night for the destruction of game.

(2) Any offence described in any statute as a "misdemeanour" or a "crime and offence" may be tried in the sheriff court either on indictment or summarily.

Instructions by Lord Advocate as to reporting offences.

9. The Lord Advocate may from time to time issue instructions to a chief constable with regard to the reporting, for consideration of the question of prosecution, of offences alleged to have been committed within the area of such chief constable, and it shall be the duty of a chief constable to whom any such instruction is issued to secure compliance therewith.

Intimation of proceedings in High Court to Lord Advocate.

10. In any proceeding in the High Court (other than a proceeding to which the Lord Advocate or a procurator fiscal is a party) it shall be competent for the court to order intimation of such proceeding to the Lord Advocate.

11. On intimation being made to the Lord Advocate of a proceeding in the High Court under section 10 of this Act, the Lord Advocate shall be entitled to appear and be heard in such proceeding. PART I Procedure after intimation.

PROCEDURE PRIOR TO TRIAL

Arrest, Judicial Examination, Custody, Bail, Etc.

12. Petitions for warrant to arrest and commit persons suspected of or charged with crime may set forth the charge in the forms set out in Schedule A to the Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form; and the provisions of sections 43 to 46 and 48 to 55 of this Act shall apply to any such petition as they apply to the indictment. Petitions for Warrants. 1887 c. 35.

13.—(1) On an application being made to a sheriff or justice alleging that any person is— Warrants for arrest of escaped prisoners and mental patients.

(*a*) an offender unlawfully at large from a prison or other institution to which the Prison Act applies in which he is required to be detained after being convicted of an offence; or

(*b*) a convicted mental patient liable to be retaken under section 40 or 140 of the Mental Health Act 1959, section 36 or 106 of the Mental Health (Scotland) Act 1960 or section 30 or 108 of the Mental Health Act (Northern Ireland) 1961 (retaking of mental patients who are absent without leave or have escaped from custody); 1959 c. 72. 1960 c. 61. 1961 c. 15 (N.I.).

the sheriff or justice may issue a warrant to arrest him and bring him before any sheriff.

(2) Where a person is brought before a sheriff in pursuance of a warrant for his arrest under this section, the sheriff shall, if satisfied that he is the person named in the warrant and if satisfied as to the facts mentioned in paragraph (*a*) or (*b*) of the foregoing subsection, order him to be returned to the prison or other institution where he is required or liable to be detained or, in the case of a convicted mental patient, order him to be kept in custody or detained in a place of safety pending his admission to hospital.

PART I

1959 c. 72. 1960 c. 61. 1961 c. 15 (N.I.).

(3) Section 139 of the Mental Health Act 1959, section 105 of the Mental Health (Scotland) Act 1960 and section 107 of the Mental Health Act (Northern Ireland) 1961 (custody, conveyance and detention of certain mental patients) shall apply to a convicted mental patient required by this section to be conveyed to any place or to be kept in custody or detained in a place of safety as they apply to a person required by or by virtue of the said Act of 1959, 1960 or 1961, as the case may be, to be so conveyed, kept or detained.

(4) In this section—

"convicted mental patient" means a person liable after being convicted of an offence to be detained under Part V of the Mental Health Act 1959, Part V of the Mental Health (Scotland) Act 1960, Part III of the Mental Health Act (Northern Ireland) 1961 or section 25, 175, 177 or 178 of this Act in pursuance of a hospital order or transfer direction together with an order or direction restricting his discharge;

"place of safety" has the same meaning as in Part V of the said Act of 1959 or Part III of the said Act of 1961 or section 462 of this Act, as the case may be;

1952 c. 52. 1952 c. 61. 1953 c. 18 (N.I.).

"Prison Act" means the Prison Act 1952, the Prisons (Scotland) Act 1952 or the Prison Act (Northern Ireland) 1953, as the case may be.

Warrant to search for or remove a child.

14.—(1) If, on an application to a justice by any person who, in the opinion of the justice, is acting in the interests of a child, it appears to the justice on information on oath that there is reasonable cause to suspect—

(*a*) that the child has been or is being assaulted, ill-treated, or neglected in any place within the jurisdiction of the justice, in a manner likely to cause him unnecessary suffering or injury to health, or

(*b*) that any offence mentioned in Schedule 1 to this Act has been or is being committed in respect of the child,

the justice may issue a warrant authorising any constable named therein to search for the child and, if it is found that he has been or is being assaulted, ill-treated or neglected in manner aforesaid, or that any such offence as aforesaid has been or is being committed in respect of him, to take him to and detain him in a place of safety, or authorising any constable to remove him with or without search to a place of safety and detain him there.

PART I

(2) A child shall not continue to be detained under the last foregoing subsection—

(*a*) where the reporter considers the child does not require compulsory measures of care, or

(*b*) after the day on which a children's hearing first sit to consider his case in pursuance of section 37(4) of the Social Work (Scotland) Act 1968, or 1968 c. 49.

(*c*) for a period exceeding seven days.

(3) A justice issuing a warrant under this section may by the same warrant cause any person accused of any offence in respect of the child to be apprehended and brought before the sheriff, and proceedings to be taken against him according to law.

(4) Any constable authorised by warrant under this section to search for or, with or without search, to remove any child may enter (if need be by force) any house, building, or other place specified in the warrant, and may remove him therefrom.

(5) Every warrant issued under this section shall be addressed to and executed by a constable, who shall be accompanied by the person making the application if that person so desires, unless the justice by whom the warrant is issued otherwise directs, and may also, if the justice by whom the warrant is issued so directs, be accompanied by a duly qualified medical practitioner.

(6) It shall not be necessary in any application, information or warrant under this section to name the child.

Sheriff's warrant may be executed out of district.

15.—(1) Any warrant granted by a sheriff against—

(*a*) a person charged with having committed a crime or offence within the jurisdiction of that sheriff; or

(*b*) a person as being in meditatione fugae,

shall be sufficient for the apprehension of that person within any other sheriff court district, and for conveying and disposing of him in terms of the warrant, without the necessity of its being backed or endorsed by any other justice.

(2) Such warrant may be executed throughout Scotland in like manner as it may be executed within the jurisdiction of the sheriff who granted the warrant.

Backing of certain warrants from the Isle of Man.

16.—(1) A warrant issued in the Isle of Man for the arrest of a person charged with an offence may, after it has been endorsed by a justice in Scotland, be executed there by the person bringing that warrant, by any person to whom the warrant was originally directed or by any officer of law of

PART I

the sheriff court district where the warrant has been endorsed as aforesaid in like manner as any such warrant issued in Scotland.

(2) In this section "endorsed" means endorsed in the like manner as a process to which section 4 of the Summary Jurisdiction (Process) Act 1881 applies.

1881 c. 24.

Execution of Scottish warrants in England and vice versa.

1952 c. 55.

17.—(1) A warrant issued in Scotland for the apprehension of a person charged with an offence may be executed in England by any constable acting within his police area; and subsections (3) and (4) of section 102 of the Magistrates' Courts Act 1952 (execution on Sunday and execution without possession of the warrant) shall apply to the execution in England of any such warrant.

(2) A warrant issued in England for the arrest of a person charged with an offence may be executed in Scotland by any constable appointed for a police area in like manner as any such warrant issued in Scotland.

(3) A warrant may be executed by virtue of this section whether or not it has been endorsed under section 14 or 15 of the Indictable Offences Act 1848.

1848 c. 42.

1914 c. 59.

(4) Nothing in this section affects the execution in Scotland of a warrant to which section 123 of the Bankruptcy Act 1914 applies.

Power of constable to take offenders into custody.

18.—(1) Without prejudice to any other powers of arrest, any constable may take into custody, without warrant—

(*a*) any person who within his view commits any of the offences mentioned in Schedule 1 to this Act, if the constable does not know and cannot ascertain his name and address;

(*b*) any person who has committed, or whom he has reason to believe to have committed, any of the offences mentioned in Schedule 1 to this Act, if the constable does not know and cannot ascertain his name and address or has reasonable ground for believing that he will abscond.

(2) Where, under the powers conferred by this section, a constable arrests any person without warrant, the superintendent or inspector of police or an officer of police of equal or superior rank, or the officer in charge of the police station to which the person is brought, shall, unless in his belief the release of the

person would tend to defeat the ends of justice, or to cause injury or danger to the child (being a person under the age of 17 years) against whom the offence is alleged to have been committed, release the person arrested on his entering into an obligation to attend at the hearing of the charge or on his finding bail for such amount as may in the judgment of the officer of police be required to secure his attendance.

Prisoners before examination to have access to solicitor.

19.—(1) Where any person has been arrested on any criminal charge, such person shall be entitled immediately upon such arrest to have intimation sent to a solicitor that his professional assistance is required by such person, and informing him of the place to which such person is to be taken for examination.

(2) Such solicitor shall be entitled to have a private interview with the person accused before he is examined on declaration, and to be present at such examination.

(3) It shall be in the power of the sheriff or justice to delay such examination for a period not exceeding 48 hours from and after the time of such person's arrest, in order to allow time for the attendance of such solicitor.

Accused at examination need not emit a declaration.

20.—(1) Where the accused is brought before the sheriff for examination on any charge and he or his solicitor intimates that he does not desire to emit a declaration in regard to such charge, it shall be unnecessary to take a declaration, and the accused may be committed for further examination or until liberated in due course of law without a declaration being taken.

(2) Where the accused does not desire to emit a declaration as aforesaid, that fact shall be recorded in the warrant of committal.

(3) The foregoing provisions of this section shall not prejudice the right of the accused subsequently to emit a declaration on intimating to the prosecutor his desire to do so.

(4) The provisions of this section shall apply to procedure under indictment, without prejudice to the accused being tried summarily by the sheriff for any offence in respect of which he has been committed until liberated in due course of law.

Examination of accused on charges arising in different districts.

21. Where there are charges against the accused in different sheriff court districts he may be brought before the sheriff of any one of such districts at the instance of the procurator fiscal of such district for examination on all or any of such charges, and may be dealt with in every respect as if such charges had arisen

PART I

in the district where he is examined, but without prejudice to the power of the Lord Advocate under section 5 of this Act to determine the court before which the accused shall be tried on such charges.

Committal until liberation in due course of law.

22.—(1) All informations shall be signed and no person shall be committed until liberated in due course of law for any crime or offence without a warrant in writing expressing the particular charge in respect of which he is committed.

(2) Any such warrant for imprisonment which either proceeds on an unsigned information or does not express the particular charge shall be null and void.

(3) The accused person shall immediately be given a true copy of the warrant for imprisonment signed by the messenger or executor of the warrant before imprisonment or the warder of the prison receiving the warrant.

Remand and committal of persons under 21.

23.—(1) Where a court remands or commits for trial or for sentence a person under 21 years of age who is charged with or convicted of an offence and is not released on bail, then, except as otherwise expressly provided by this section, the following provisions shall have effect, that is to say—

(*a*) subject to the following paragraph, if he is under 16 years of age the court shall commit him to the local authority in whose area the court is situated, and the authority shall have the duty of placing him in a suitable place of safety chosen by the authority instead of committing him to prison ;

(*b*) if he is a person of over 16 years of age, or a child under 16 years of age but over 14 years of age who is certified by the court to be unruly or depraved, and the court has been notified by the Secretary of State that a remand centre is available for the reception from that court of persons of his class or description, he shall be committed to a remand centre instead of being committed to prison.

(2) Where any person is committed to a local authority or to a remand centre under any provision of this Act, that authority or centre shall be specified in the warrant, and he shall be detained by the authority or in the centre for the period for which he is committed or until he is liberated in due course of law.

(3) Where any person has been committed to a local authority under any provision of this Act, the court by which he was committed, if the person so committed is not less than 14 years of

age and it appears to the court that he is unruly or depraved, may revoke the commitment and commit the said person—

(*a*) if the court has been notified that a remand centre is available for the reception from that court of persons of his class or description, to a remand centre; and

(*b*) if the court has not been so notified, to a prison.

(4) Where, in the case of a person under 16 years of age who has been committed to prison or to a remand centre under this section, the sheriff is satisfied that his detention in prison or a remand centre is no longer necessary, he may revoke the commitment and commit the person to the local authority in whose area the court is situated, and the authority shall have the duty of placing him in a suitable place of safety.

Committal of children to custody in place of safety.

24.—(1) Any court, on remanding or committing for trial a child who is not liberated on bail shall, instead of committing him to prison, commit him to the local authority in whose area the court is situated to be detained in a place of safety chosen by the local authority for the period for which he is remanded or until he is liberated in due course of law.

Provided that in the case of a child over 14 years of age it shall not be obligatory on the court so to commit him if the court certifies that he is of so unruly a character that he cannot safely be so committed or that he is of so depraved a character that he is not a fit person to be so detained.

(2) A commitment under this section may be varied, or, in the case of a child over 14 years of age, who proves to be of so unruly a character that he cannot safely be detained in such custody, or to be of so depraved a character that he is not a fit person to be so detained, revoked, by the court which made the order, or if application cannot conveniently be made to that court, by a sheriff sitting summarily having jurisdiction in the place where the court which made the order sat, and if it is revoked the child may be committed to prison.

Power of court to commit to hospital a person suffering from mental disorder.

25.—(1) Where a court remands or commits for trial a person charged with any offence who appears to the court to be suffering from mental disorder, and the court is satisfied that a hospital is available for his admission and suitable for his detention, the court may, instead of remanding him in custody, commit him to that hospital.

(2) Where any person is commited to a hospital as aforesaid, the hospital shall be specified in the warrant and, if the responsible medical officer is satisfied that he is suffering from mental disorder of a nature or degree which warrants his admission to a

PART I
1960 c. 61.

hospital under Part IV of the Mental Health (Scotland) Act 1960, he shall there be detained for the period for which he is remanded or the period of committal, unless before the expiration of that period he is liberated in due course of law.

(3) When the responsible medical officer has examined the person so detained he shall report the result of that examination to the court and, where the report is to the effect that the person is not suffering from mental disorder of such a nature or degree as aforesaid, the court may commit him to any prison or other institution to which he might have been committed had he not been committed to hospital or may otherwise deal with him according to law.

(4) No person shall be committed to a hospital under this section except on the written or oral evidence of a medical practitioner.

Bail competent before committal.

26.—(1) All crimes and offences, except murder and treason, shall be bailable.

(2) Any person accused of a crime which is by law bailable shall be entitled immediately after he has been brought before a justice for examination on declaration to apply to such justice or to the sheriff for liberation on his finding caution in common form to appear at any diet to which he may be cited for further examination, or in order to answer any indictment or complaint which may be served upon him:

Provided that the prosecutor shall be entitled to be heard against any such application.

(3) The sheriff or justice shall be entitled in his discretion to refuse such application before the person accused is committed until liberated in due course of law.

(4) Where an accused person is admitted to bail without being committed until liberated in due course of law, it shall not be necessary so to commit him, and it shall be lawful to serve him with an indictment or complaint without his having been previously so committed.

Renewal of application for bail after committal.

27. Where bail is refused before committal until liberation in due course of law on an application made under the last foregoing section, the application for bail may be renewed after such committal.

Admission or refusal of bail after committal.

28.—(1) Any sheriff having jurisdiction to try the offence or to commit the accused until liberated in due course of law may, at his discretion, on the application of any person who has been

committed until liberation in due course of law for any crime or offence, except murder or treason, and after opportunity shall have been given to the prosecutor to be heard thereon, admit or refuse to admit such person to bail.

(2) Such application shall be disposed of within 24 hours after its presentation to the sheriff, failing which the accused shall be forthwith liberated.

Amount of bail.

29. Any sheriff admitting a person to bail shall fix the bail at such an amount as he may consider sufficient to ensure the appearance of such person to answer at all diets to which he may be cited on the charge.

Application for review of court's decision on bail and caution.

30.—(1) The following provisions of this section shall apply where a court has refused to admit a person to bail or, where a court has so admitted a person, the bail fixed in his case has not been found.

(2) A court shall, on the application of any such person as aforesaid, have power to review its decision to admit to bail or its decision as to the bail fixed and may, on cause shown, admit the person to bail or, as the case may be, fix bail at a lower amount.

(3) An application under this section, where it relates to the original decision of the court, shall not be made before the fifth day after that decision and, where it relates to a subsequent decision, before the fifteenth day thereafter.

(4) Nothing in the provisions of this section shall affect any right of a person to appeal against the decision of a court in relation to admitting to bail or to the bail fixed.

(5) In the foregoing provisions of this section, any reference to bail includes a reference to caution for interim liberation and any reference to admitting to bail shall include a reference to ordering the finding of caution as aforesaid.

Appeal in respect of bail.

31.—(1) Where an application for bail after commitment until liberation in due course of law is refused by any sheriff, or where the applicant is dissatisfied with the amount of bail fixed, he may appeal to the High Court, and the High Court may, in its discretion, order intimation to the Lord Advocate.

(2) Where an application for bail is granted by any sheriff, whether before or after commitment until liberation in due course of law, the public prosecutor, if dissatisfied with the decision allowing bail, or with the amount of bail fixed, may appeal to the High Court, and the applicant shall not be liberated until the

PART I

appeal by the prosecutor is disposed of, except as provided in section 33 of this Act.

(3) Written notice of appeal shall be immediately given to the opposite party by the party appealing under this section.

(4) An appeal under this section shall be disposed of by the High Court or any Lord Commissioner of Justiciary in court or in chambers after such inquiry and hearing of parties as shall seem just.

(5) In the event of the appeal of the public prosecutor under this section being refused, the court may award expenses against him.

No fees exigible against accused in respect of application for bail.

32. No clerks' fees, court fees, or other fees or expenses shall be exigible from, or be awarded against, an accused in respect of his application for bail, or of the appeal of such application to the High Court.

Liberation of applicant when appeal by public prosecutor.

33.—(1) When an appeal is taken by the public prosecutor either against the grant of bail or against the amount fixed, the applicant to whom bail has been granted shall, if the bail fixed shall have been found by him, be liberated after 72 hours, or where the place of application is in the Outer Hebrides, or in Orkney or Zetland, 96 hours from the granting of the application, whether the appeal be disposed of or not, unless the High Court shall grant an order for his further detention in custody. In computing the aforesaid periods, Sundays and public holidays, whether general or court holidays, shall be excluded.

(2) Notice by telegraph to the governor of the prison of the issue of such an order within the time aforesaid bearing to be sent by the Clerk of Justiciary or the Crown Agent shall be sufficient warrant for the detention of the applicant pending arrival of the order in due course of post.

Power of court to refund bail.

34. Where any court has made an order for the forfeiture of bail it shall be competent for the court, if it is satisfied that it is reasonable in all the circumstances to do so, to recall the order and direct that the bail money forfeited shall be refunded. Any decision of a court under this section shall be final and not subject to review.

Right of Lord Advocate and High Court to admit a person to bail.

35. Nothing contained in this Act shall affect the right of the Lord Advocate or the High Court to admit to bail any person charged with any crime or offence.

PART I

Citation of persons liberated on bail at domiciles specified in bail bonds.

36. All bail bonds whatsoever received in order to obtain the liberation of accused persons from custody shall specify the domicile at which such persons may thereafter be cited for trial before any criminal court.

Power to order parent to give security for child's good behaviour.

37.—(1) Where a child has been charged with any offence, the court may order his parent or guardian to give security for his co-operation in securing the child's good behaviour.

(2) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.

(3) Any sums ordered on forfeiture of any such security as aforesaid to be paid by a parent or guardian may be recovered from him by civil diligence or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child was charged.

Separation of children from adults at courts, etc.

38. Arrangements shall be made for preventing a child while detained in a police station, or while being conveyed to or from any criminal court, or while waiting before or after attendance in any criminal court, from associating with an adult (not being a relative) who is charged with any offence other than an offence with which the child is jointly charged, and for ensuring that a female child shall, while so detained, being conveyed, or waiting, be under the care of a woman.

Attendance at court of parent of child charged with an offence, etc.

39.—(1) Where a child is charged with any offence, his parent or guardian may in any case, and shall, if he can be found and resides within a reasonable distance, be required to attend at the court before which the case is heard or determined during all the stages of the proceedings, unless the court is satisfied that it would be unreasonable to require his attendance.

(2) Where the child is arrested, the constable by whom he is arrested or the officer of police in charge of the police station to which he is brought shall cause the parent or guardian of the child, if he can be found, to be warned to attend at the court before which the child will appear.

(3) For the purpose of enforcing the attendance of a parent or guardian and enabling him to take part in the proceedings and enabling orders to be made against him, rules may be made under section 457 of this Act, for applying, with the necessary adaptations and modifications, such of the provisions of Part II of this Act as appear appropriate for the purpose.

PART I

(4) The parent or guardian whose attendance shall be required under this section shall be the parent or guardian having the actual possession and control of the child:

Provided that, if that person is not the father, the attendance of the father may also be required.

(5) The attendance of the parent of a child shall not be required under this section in any case where the child was before the institution of the proceedings removed from the custody or charge of his parent by an order of a court.

Notice to local authority of charge against a child.

40.—(1) Where a child is to be brought before a court, notification of the day and hour when, and the nature of the charge on which, the child is to be so brought shall be sent by the chief constable of the area in which the offence is alleged to have been committed to the local authority for the area in which the court will sit.

(2) Where a local authority have received a notification under the foregoing subsection they shall make such investigations and render to the court a report which shall contain such information as to the home surroundings of the child as appear to them will assist the court in the disposal of his case, and the report shall contain information, which the appropriate education authority shall have a duty to supply, as to the school record, health and character of the child.

The Indictment

Indictment forms.

1887 c. 35.

41. All prosecutions for the public interest before the High Court or before the sheriff sitting with a jury shall proceed on indictment in name of Her Majesty's Advocate, and such indictment may be in the forms set out in Schedule A to the Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form and shall be signed by the Lord Advocate or one of his deputes, or by a procurator fiscal, and the words "By Authority of Her Majesty's Advocate" shall be prefixed to the signature of such procurator fiscal.

Procedure on resignation, death or removal of Lord Advocate.

42. All indictments which have been raised by any Lord Advocate shall continue in force and effect notwithstanding his resignation, and may be taken up and proceeded with by his successor; and where any Lord Advocate shall die during his tenure of office, or otherwise be removed from office, it shall be lawful to indict persons accused in name of the Solicitor General

PART I

then in office until another Lord Advocate is appointed, and the advocates depute and procurators fiscal shall have power, notwithstanding such death or removal from office of the Lord Advocate, to take up and proceed with any indictments already raised in name of such Lord Advocate, and any indictments that may be raised in name of such Solicitor General.

Naming of accused.

43. A person accused may be named and designed in an indictment according to the existing practice, or he may be named by the name given by him and designed as of the place given by him as his residence when he is examined on declaration, or he may be named by the name under which he is committed until liberated in due course of law, and it shall not be necessary to set forth any other name or names by which he may be known, or any other address or designation.

Nomen juris unnecessary.

44. It shall not be necessary in any indictment to specify by any nomen juris the crime which is charged, but it shall be sufficient that the indictment sets forth facts relevant and sufficient to constitute an indictable crime.

Case of two or more persons charged.

45. When in any indictment two or more persons are charged together with committing a crime, it shall not be necessary to allege that "both and each or one or other," or that "all and each or one or more" of them committed the crime, or did or failed to do any particular act, but such alternatives shall be implied in all such indictments.

"Guilty, actor or art and part" unnecessary.

46. It shall not be necessary to state in any indictment that a person accused is "guilty, actor or art and part," but such charge shall be implied in all indictments.

"All which or part" implied.

47. The customary conclusion of indictments formerly in use, commencing with the words "All which or part thereof," shall be implied in all indictments though not set forth.

Qualifying words to be implied.

48. It shall not be necessary in any indictment to allege that any act of commission or omission therein charged was done or omitted to be done "wilfully" or "maliciously," or "wickedly and feloniously," or "falsely and fraudulently," or "knowingly," or "culpably and recklessly," or "negligently," or in "breach of duty," or to use such words as "knowing the same to be forged," or "having good reason to know," or "well knowing the same to have been stolen," or to use any similar words or expressions qualifying any act charged, but such qualifying allegation shall be implied in every case.

PART I

Quotation of statutes unnecessary.

49. It shall not be necessary in an indictment for a crime punishable under any Act of Parliament to quote the Act of Parliament or any part of it, but it shall be sufficient to allege that the crime was committed contrary to such Act of Parliament, and to refer to the Act and any section of the Act founded on without setting forth the enactment at length.

Latitude as to time and place.

50.—(1) The latitude formerly in use to be taken in stating time in indictments at the instance of Her Majesty's Advocate shall be implied in all statements of time where an exact time is not of the essence of the charge.

(2) The latitude formerly in use to be taken in stating any place in such indictments by adding to the word "at", or to the word "in", the words "or near", or the words "or in the near neighbourhood thereof" or similar words, shall be implied in all statements of place where the actual place is not of the essence of the charge.

(3) Where the circumstances of the offence charged make it necessary to take an exceptional latitude in regard to time or place it shall not be necessary to set forth such circumstances in the indictment, or to set forth that the particular time or the particular place is to the prosecutor unknown:

Provided that where exceptional latitude is taken, the court shall, if satisfied that such exceptional latitude was not reasonable in the circumstances of the case, give such remedy to the person accused by adjournment of the trial or otherwise as shall seem just.

Latitude as to quantities, persons, things or modes.

51. The latitude formerly in use to be taken in indictments in describing quantities by the words "or thereby", or the words "or part thereof", or the words "or some other quantity to the prosecutor unknown" or similar words, shall be implied in all statements of quantities; and the latitude formerly in use to be taken in stating details connected with the perpetration of any act regarding persons, things or modes by inserting general alternative statements followed by the words "to the prosecutor unknown" or similar words, shall be implied in every case.

Description of buildings, goods, money or other property.

52. Where in an indictment, whether raised under statute or at common law, buildings, goods, money or property of any other description are mentioned, it shall not be necessary to allege the property or possession thereof to be in any person, official, corporation or company, or that the same were not the property of the accused, and the allegation that the same were

PART I

not the property of the accused shall be implied in all cases where it is essential to the criminality of the charge.

Description of persons, goods, etc.

53. Where in an indictment or any list or inventory relative thereto any person is referred to, it shall be sufficient to describe him by his name and ordinary address, and it shall not be necessary to describe him as "now or lately" residing at such address, but such words shall be implied, and where goods, articles or things require to be described, it shall be sufficient to describe them in general terms without specifying the materials of which they are made, or any particulars which distinguish them from other goods, articles or things of a similar kind except in cases in which such particulars are essential to the constitution of the crime charged.

"Money" to include coin, bank notes and post office orders.

54. The word "money" when used in an indictment shall include all current coin of the realm, post office orders and postal orders and bank or banker's notes, and it shall not be necessary to specify in any statement in an indictment relating to a sum of money whether such sum consisted of gold, silver or other coin, post office orders or postal orders, or bank or banker's notes, or any of them, but it shall be sufficient to state the sum as consisting of money.

Setting forth documents unnecessary.

55. Where in an indictment any document requires to be referred to, it shall not be necessary to set forth the document or any part of it in such indictment, but it shall be sufficient to refer to such document by a general description and, where it is to be produced, by the number given to it in the list of productions for the prosecution.

Declarations, etc., not averred.

56. It shall not be necessary to set forth in an indictment the fact that the accused person emitted a declaration, nor to set forth any productions that are to be used against him, but it shall be sufficient that they be entered in the list of productions to be used at the trial.

Indictments, etc., written or printed or partly so.

57. The principal record and service copies of indictments and all notices of citation, all lists of witnesses, productions and jurors, and all other official documents required in criminal prosecutions, may be either written or printed, or partly written and partly printed.

Authentication of alterations to indictment, etc.

58.—(1) Any deletion or correction made before service on the principal record or service copy of an indictment shall be sufficiently authenticated by the initials of any person who has signed, or could by law have signed, the same.

PART I

(2) Any deletion or correction made on a service copy of an indictment, or on any notice of citation, postponement, adjournment or other notice required to be served on a person accused or on any execution of citation or notice of other document requiring to be served shall be sufficiently authenticated by the initials of the person serving the same.

Reset.

59. Criminal resetting of property shall not be limited to the receiving of property taken by theft or robbery, but shall extend to the receiving of property appropriated by breach of trust and embezzlement and by falsehood fraud and wilful imposition; and under any indictment charging the resetting of property dishonestly appropriated by any of these means, it shall not be necessary to set forth any details of the crime by which the dishonest appropriation was accomplished, but it shall be sufficient to set forth that the person accused received such property, it having been dishonestly appropriated by theft or robbery, or by breach of trust and embezzlement, or by falsehood fraud and wilful imposition, as the case may be.

Robbery, etc. to include reset, and theft to include breach of trust, etc.

60.—(1) Under an indictment for robbery, or for theft, or for breach of trust and embezzlement, or for falsehood fraud and wilful imposition, a person accused may be convicted of reset.

(2) Under an indictment for robbery, or for breach of trust and embezzlement, or for falsehood fraud and wilful imposition, a person accused may be convicted of theft.

(3) Under an indictment for theft, a person accused may be convicted of breach of trust and embezzlement, or of falsehood fraud and wilful imposition, or may be convicted of theft, although the circumstances proved may in law amount to robbery.

(4) The power conferred by this section to convict a person of an offence other than that with which he is charged in an indictment shall be exercisable by the sheriff court before which such person is tried notwithstanding that that other offence was committed outside the jurisdiction of that sheriff court.

Procedure where more than one crime charged.

61.—(1) Where in an indictment two or more crimes or acts of crime are charged cumulatively, it shall be lawful to convict of any one or more of them.

(2) Any part of what is charged in an indictment, constituting in itself an indictable crime, shall be deemed separable to the effect of making it lawful to convict of such crime.

(3) Where any crime is charged in an indictment as having been committed with a particular intent or with particular

circumstances of aggravation, it shall be lawful to convict of the crime without such intent or aggravation. PART I

Mode of charging certain offences committed against two or more children under 17.

62.—(1) Where a person is charged with committing any of the offences mentioned in Schedule 1 to this Act in respect of two or more children under the age of 17 years, the same indictment may charge the offence in respect of all or any of them.

(2) The same indictment may also charge any person as having the custody, charge, or care, alternatively or together, and may charge him with the offences of assault, ill-treatment, neglect, abandonment, or exposure, together or separately, and may charge him with committing all or any of those offences in a manner likely to cause unnecessary suffering or injury to health, alternatively or together.

(3) When any offence mentioned in Schedule 1 to this Act charged against any person is a continuous offence, it shall not be necessary to specify in the indictment the date of the acts constituting the offence.

Attempt at crime.

63.—(1) Attempt to commit any indictable crime shall itself be an indictable crime, and under an indictment which charges a completed crime, the accused may be lawfully convicted of an attempt to commit such crime; and under an indictment charging an attempt, the accused may be convicted of such attempt although the evidence be sufficient to prove the completion of the crime said to have been attempted.

(2) Under an indictment which charges a crime which imports personal injury inflicted by the accused, resulting in death or serious injury to the person, the accused may be lawfully convicted of the assault or other injurious act, and may also be lawfully convicted of the aggravation that such assault or other injurious act was committed with intent to commit such crime.

Statutory offences which are offences at common law.

64. Where any act set forth in an indictment as contrary to any Act of Parliament is also criminal at common law, or where the facts proved under such an indictment do not amount to a contravention of the statute but do amount to a crime at common law, it shall be lawful to convict of the common law crime.

Superfluous particulars as to identity.

65. When in the trial of any indictment the evidence led shall be sufficient to prove the identity of any person, corporation or company, or of any place, or of any thing, it shall not be a valid objection to the sufficiency of such evidence that any particulars set forth in regard thereto in the indictment have not been proved.

PART I

Proof of exceptions, qualifications, etc.

66. Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany in the same section the description of the offence in the statute or order creating the offence, may be proved by the accused, but need not be specified or negatived in the indictment, and no proof in relation to such exception, exemption, proviso, excuse, or qualification shall be required on behalf of the prosecution.

Offence committed in special capacity.

67. Where an offence is alleged to be committed in any special capacity, as by the holder of a licence, master of a vessel, occupier of a house, or the like, the fact that the accused possesses the qualification necessary to the commission of the offence shall, unless challenged by preliminary objection before his plea is recorded, be held as admitted.

Notice of previous convictions

Notice of previous convictions.

68.—(1) No mention shall be made in the indictment of previous convictions, nor shall extracts of previous convictions be included in the list of productions annexed to the indictment.

(2) If the prosecutor desires to place before the court any previous conviction, he shall cause to be served on the accused along with the indictment a notice in the form of Form No. 1 of Schedule 7 to the Criminal Justice (Scotland) Act 1949 or in the form set out in an Act of Adjournal under this Act or as nearly as may be in such form, and any conviction set forth in that notice shall be held to apply to the accused unless he gives, in accordance with subsection (3) of this section, written intimation objecting to such conviction on the ground that it does not apply to him or is otherwise inadmissible.

1949 c. 94.

(3) Where the accused pleads not guilty at the first diet, intimation objecting to a conviction under subsection (2) of this section shall be given, at least five clear days before the second diet where the case it to be tried in the sheriff court; and where High Court for the second diet, or to the procurator fiscal of the district to the court of which the accused is cited for the second diet where the case is to be tried in the sheriff court; and where the accused pleads guilty at the first diet, no objection to any such conviction shall be entertained unless the accused has, at least two clear days before that diet, given intimation to the procurator fiscal of the district to the court of which the accused is cited for that diet.

(4) Where notice is given by the accused under section 102 of this Act of his intention to plead guilty and the prosecutor desires to place before the court any previous conviction, he

PART I

shall cause to be served on the accused along with the indictment a notice in the form of Form No. 1 of Schedule 7 to the Criminal Justice (Scotland) Act 1949 or in the form set out in an Act of Adjournal under this Act or as nearly as may be in such form, and any conviction set forth in that notice shall be held to apply to the accused unless within two days after service of the notice he gives to the procurator fiscal written intimation objecting to such conviction on the ground that it does not apply to him or is otherwise inadmissible. 1949 c. 94.

Citation of Accused, Witnesses and Jurors

Warrants for citation.

69. When any sitting of the sheriff court or of the High Court has been appointed to be held for the trial of persons accused on indictment, the sheriff clerk of the district in which the second diet is to be called, where such trials are to take place in the sheriff court, or the Clerk of Justiciary, where such trials are to take place in the High Court, shall issue a warrant to officers of law to cite persons accused, witnesses, and jurors, conform to Schedule B to the Criminal Procedure (Scotland) Act 1887; and the execution of the citation against such accused persons shall be conform to Schedule C to that Act; and the execution of the citation of witnesses shall be conform to Schedule D to that Act; and the execution of the citation of jurors shall be conform to Schedule E to that Act; and such warrant authenticated by the signature of such clerk, or a duly certified copy thereof, shall be a sufficient warrant to all officers competent. 1887 c. 35.

The warrant and the executions mentioned in this section may, instead of being conform to the said Schedules B to E, be in the form set out in an Act of Adjournal under this Act or as nearly as may be in such form.

Service of indictment and list of witnesses.

70. The accused shall be served with a full copy of the indictment and of the list of the names and addresses of the witnesses to be adduced by the prosecution.

Manner of service of indictment, etc.

71. Service of indictment, list of witnesses and list of productions appended thereto, and all notices or intimations to the accused, and all citations of witnesses, whether for precognition or trial, may be made or given by any macer, messenger at arms, sheriff officer, or officer of police at any place, and where the accused is in prison at the time of service on him, such service shall be made by any governor, deputy governor, or warder of the prison.

PART I

Officers may cite jurors and witnesses, without witnesses and oath of officer sufficient evidence of citation.

72. It shall be sufficient for the citation of any juror or witness that such citation be given by any officer of law duly authorised, without witnesses; and the oath of such officer in support of the execution shall be held and received as sufficient evidence of such citation when the same shall be questioned in a court of law.

Execution of citation of indictment.

73.—(1) It shall be no objection to the service of an indictment, or to the citation of any juror or witness, that the officer who discharged the duty was not at the time in possession of the warrant of citation; and it shall not be necessary to produce the execution of citation of any indictment, unless sentence of forfeiture of a bond of caution granted for appearance to stand trial shall be moved for, but without prejudice to such execution being exhibited to disprove objections to service when stated to the court.

(2) It shall be no objection to the admissibility of the officer or witness who served such indictment to give evidence respecting such service that his name is not included in the list of witnesses served on the accused.

Proceedings against bodies corporate.

74.—(1) In any proceedings against a body corporate, the indictment may be served by delivery of a copy of the indictment with notice to appear attached thereto at the registered office or, if there is no registered office or the registered office is not in the United Kingdom, at the principal place of business in the United Kingdom of the body corporate.

Where a letter containing a copy of the indictment has been sent by registered post or by the recorded delivery service to the registered office or principal place of business of the body corporate, an acknowledgment or certificate of the delivery of the letter issued by the Post Office shall be sufficient evidence of the delivery of the letter at the registered office or place of business on the day specified in such acknowledgment or certificate.

(2) In any such proceedings as aforesaid the body corporate may, for the purpose of—

(*a*) stating objections to the competency or relevancy of the indictment or proceedings; or

(*b*) tendering a plea of guilty or not guilty; or

(*c*) making a statement in mitigation of sentence;

appear by a representative of the body corporate.

(3) Where at the first diet in any such proceedings as aforesaid the body corporate does not appear or tender any plea in accordance with the provisions of the last foregoing subsection, or by counsel or a solicitor, it shall be deemed to have tendered a plea of not guilty.

(4) Where at the second diet in any such proceedings as aforesaid the body corporate does not appear in accordance with the provisions of subsection (2) of this section, or by counsel or a solicitor, the court shall, on the motion of the prosecutor, if it is satisfied that the provisions of subsection (1) of this section have been complied with, proceed to hear and dispose of the case in the absence of the body corporate.

(5) Where in any such proceedings as aforesaid a body corporate is sentenced to a fine, the fine may be recovered in like manner in all respects as if a copy of the sentence certified by the clerk of the court were an extract decree of the Court of Session for the payment of the amount of the fine by the body corporate to the Queen's and Lord Treasurer's Remembrancer.

(6) Nothing contained in section 103 or 105 of this Act shall require a plea tendered by or on behalf of a company to be signed.

(7) If on the application of the procurator fiscal, a sheriff is satisfied that there is reasonable ground for suspecting that an offence has been or is being committed by a body corporate, the sheriff shall have the like power to grant warrant for the citation of witnesses and the production of documents and articles as he would have if a petition charging an individual with the commission of the offence were presented to him.

(8) In this section, the expression " representative ", in relation to a body corporate against which such proceedings as aforesaid are brought, means an officer or servant of the body corporate duly appointed by it for the purpose of those proceedings. Such appointment need not be under the seal of the body corporate, and a statement in writing purporting to be signed by the managing director of, or by any person having or being one of the persons having the management of the affairs of the body corporate, to the effect that the person named in the statement has been appointed the representative of the body corporate for the purpose of the said proceedings shall be admissible without further proof as evidence that the person has been appointed.

Fixing the Diets

Two diets.

75. The notice to a person accused when served with an indictment to appear and answer thereto shall contain two diets of appearance in the form of Schedule F to the Criminal Procedure (Scotland) Act 1887 where the second diet is to be in the

1887 c. 35.

PART I

sheriff court, and in the form of Schedule G to that Act when the second diet is to be in the High Court, and such first diet shall be not less than six clear days after the service of the indictment, and such second diet shall not be less than nine clear days after such first diet.

The said notice may, instead of being in the form of the said Schedule F or G, be in the form set out in an Act of Adjournal under this Act or as nearly as may be in such form.

Notice for first diet.

76.—(1) Where a person is charged on indictment, the notice for the first diet of appearance shall call on that person to appear in the sheriff court before which he appeared on judicial examination unless the Lord Advocate otherwise directs.

(2) The Lord Advocate may make a direction that the first diet of appearance may be taken at a sheriff court other than the sheriff court where the accused appeared on judicial examination either in respect of a class of cases or in respect of particular cases.

Alteration of diet.

77. Where in any proceedings on indictment the second diet in which is to be in the sheriff court the indictment is not brought to trial at that diet and a warrant has been issued by the sheriff clerk under section 69 of this Act for a subsequent sitting of the court on a day within one month after the date of the aforesaid second diet, it shall be lawful for the court to adjourn that diet to the subsequent sitting, and the warrant shall have effect as if the second diet had been originally fixed for the date of such subsequent sitting.

Lodging of List of Witnesses, Productions, Special Defence, Etc.

Record copy indictment and list of witnesses.

78. The record copy of the indictment shall on or before the date of service of the indictment be lodged with the sheriff clerk of the district in which the court of the first diet is situated, and a copy of the list of witnesses and a copy of the list of productions shall be lodged with the sheriff clerk of the district in which the court of the second diet is situated.

Description of witnesses.

79.—(1) The list of witnesses shall consist of the names of the witnesses, with their addresses added, and it shall not be necessary to insert the words " now or lately residing at," or any similar words, and it shall not be an objection to the admissibility of any witness that he has ceased to reside at the address given before the date of the trial, provided that he resided at such address at some time, not being more than six months previous to the date of the trial.

PART I

(2) It shall not be necessary to insert in the list of witnesses the names of any witnesses to the declaration of the accused or the names of any witnesses to prove that an extract conviction applies to the accused, but witnesses may be examined in regard to these matters without previous notice.

Objections to witnesses.

80. Any objection in respect of misnomer or misdescription of any person named in the indictment, or of any witness in the list of witnesses, must be stated before a jury has been sworn to try the case, and no such objection shall be admitted as ground for postponing any trial or for excluding any witness, unless the accused shall, at least four clear days before the second diet, give notice to the procurator fiscal of the district of the second diet where notice of trial is given for the sheriff court, or to the Crown Agent where notice of trial is given for the High Court, of his inability to discover who such person named in the indictment is, or to find such witness, and shall show that notwithstanding such intimation to the prosecutor he has not been furnished with such additional information as might enable him to ascertain who such person is, or to find such witness in sufficient time to recognise him before the trial, and where either of these things shall be shown the court shall give such remedy by postponement, adjournment, or otherwise, as shall seem just.

Examination by prosecutor of witnesses, etc., not included in lists lodged.

81. In any trial it shall be competent with the leave of the court for the prosecutor to examine any witness or to put in evidence any production not included in the lists lodged by him, provided that written notice containing, in the case of a witness, his name and address shall have been given to the accused not less than two clear days before the day on which the jury is sworn to try the case.

Written notice of special defence and examination of witnesses and productions not included in lists lodged.

82.—(1) It shall not be competent for the accused to state any special defence unless a plea of special defence shall be tendered and recorded at the first diet, or unless cause be shown to the satisfaction of the court for a special defence not having been lodged till a later day, which must in any case not be less than two clear days before the second diet.

(2) It shall not be competent for the accused to examine any witnesses or to put in evidence any productions not included in the lists lodged by the prosecutor, unless written notice of the names and addresses of such witnesses and of such productions shall have been given to the procurator fiscal of the district of the second diet when the case is to be tried in the sheriff court, or to the Crown Agent where the case is to be tried in the High Court, at least three clear days before the

PART I

day on which the jury is sworn to try the case, or unless the accused shall show before a jury is sworn to try the case that he was unable to give the full notice of three days in regard to any witnesses he may desire to examine or productions he may desire to lodge, and where this is shown the court shall give such remedy to the prosecutor by adjournment or postponement of the trial or otherwise as shall seem just.

(3) A copy of every written notice required by the last foregoing subsection shall be lodged by the accused with the sheriff clerk of the district in which the second diet is to be held, or in any case the second diet of which is to be held in the High Court in Edinburgh with the Clerk of Justiciary, at or before the second diet, for the use of the court.

Accused entitled to see productions.

83. The accused shall be entitled to see the productions according to the existing law and practice in the office of the sheriff clerk of the district in which the court of the second diet is situated or, where the second diet is to be in the High Court in Edinburgh, in the Justiciary Office.

Proof as to productions.

84. Where a person who has examined a production is adduced to give evidence with regard thereto and the production has been lodged at least eight days before the second diet, it shall not be necessary to prove that the production was received by him in the condition in which it was taken possession of by the procurator fiscal or the police and returned by him after his examination of it to the procurator fiscal or the police unless the accused, at least four days before the second diet, gives to the Crown Agent, where he is cited to the High Court for the second diet, or to the procurator fiscal of the district to the court of which he is cited for the second diet, where the case is to be tried in the sheriff court, written notice that he does not admit that the production was received or returned as aforesaid.

Preparation of Jury List, etc.

Forty-five jurors to be returned for trials.

85.—(1) For the purpose of a trial, the number of jurors required to be returned by the sheriff principal to the court shall be 45, unless otherwise directed.

(2) The Lord Justice Clerk or any Lord Commissioner of Justiciary may direct more than 45 persons to be summoned as jurors to serve in any trial in the High Court.

Jurors for High Court at Edinburgh.

86. The High Court may by Act of Adjournal specify the areas from which and the proportions in which jurors are to be summoned for trials in that court to be held in Edinburgh,

and for any such trial the sheriff principal of the sheriffdom in which the trial is to take place shall requisition the required number of jurors from the areas and in the proportions so specified.

Jurors for High Court when on circuit.

87. Where the High Court is to be on circuit, the sheriff principal of the sheriffdom in which a trial is to be held shall requisition from the sheriff court districts in which the circuit is to take place the required number of jurors for that trial in such proportions as may be specified in an Act of Adjournal under this Act.

Area from which jury summoned to circuit court.

88. When the High Court shall exercise its power of holding a court in any town which may be most convenient for the trial of any crime in or near the locality in which such crime has been committed, and where such town is not one of the towns in which the High Court usually sits, the jury summoned to try such case shall be summoned from the general jury roll of the sheriff court district in which such town is situated.

Jurors in inferior courts.

89. For the purpose of a trial in any inferior court the clerk of court shall be furnished with a list of names from the jury book of the sheriff court district in which the court is held, containing the number of persons required.

Order in which names of jurors are to be taken.

90. The sheriffs principal, in any return of jurors made by them to a court, shall take the names in regular order, beginning at the top of the lists in the said jury books, in each of the sheriff court districts, as required ; and as often as any juror shall be returned to them, they shall mark or cause to be marked, in the said general jury book of their respective sheriff court districts the date when any such juror shall have been returned to serve ; and in any such return they shall commence with the name immediately after the last in the preceding return, without regard to the court to which the return was last made, and taking the subsequent names in the order in which they shall have been entered, as herein directed, and so to the end of the lists respectively.

Names of jurors dying or becoming disqualified to be passed over in making returns of jurors.

91. Where a person whose name has been entered in the said general jury book dies, or becomes disqualified as a juror, whether from loss of property, absence, or other legal cause, the sheriff principal, in making returns of jurors in accordance with the provisions of this Act, shall pass over the name of that person, but the date at which his name shall have been

PART I

so passed over, and the reason therefor, shall be entered at the time in the said general jury book.

Jurors as returned to serve on trials.

92. The lists returned in accordance with the provisions of this Act by the sheriffs principal to the clerks of court, and none other, shall be used for the several trials for which the same shall have been required.

Names of jurors to be inserted in one roll.

93. The persons to serve upon assizes in the High Court shall be listed and their names and designations shall be inserted in one roll to be signed by the judge.

One list of assize sufficient for all trials at the same diet in High Court.

94. When in the High Court more than one case shall be set down for trial at one and the same diet, it shall not be necessary to prepare more than one list of assize, and such list shall be authenticated by the signature of a judge of the said court, and shall be the list of assize for the trial of all parties cited to that particular diet; and the persons included in such list shall be summoned to serve generally upon the assize of all the accused cited to such diet, and one general execution of citation only shall be returned against them; and a copy of such list, certified by one of the clerks of court, shall have the like effect, for all purposes for which such list may be required, as the principal list of assize authenticated as aforesaid.

No irregularity in lists, etc., to be an objection to jurors.

95. No irregularity in making up the lists in accordance with the provisions of this Act, or in transmitting the same, or in the warrant of citation, or in summoning jurors, or in returning any execution of citation, shall constitute an objection to jurors whose names shall be included in the jury list, reserving always to the court to judge of the effect of an objection founded on any felonious act by which jurors may be returned to serve in any case contrary to the provisions of this Act or the Jurors (Scotland) Act 1825.

1825 c. 22.

Notice of jury list.

96.—(1) It shall not be necessary to serve any list of jurors upon the accused, but on and after the date of the service of an indictment a list of jurors, prepared under the directions of the Clerk of Justiciary where the second diet is to be held in the High Court, and prepared by the sheriff clerk of the district in which the second diet for the trial of such person is to be held, where the second diet is to be held in the sheriff court shall be kept in the office of the sheriff clerk of the district in which the court of the second diet is situated, and the accused shall be entitled to have a copy supplied to him on application free of charge.

(2) Such list shall contain not less than 30 names, and shall be headed "List of Assize for the Sitting of the High Court of Justiciary (or, the Sheriff Court of at) on the of 19 ."

Sufficient jurors only to be summoned.

97. It shall not be necessary to summon all the jurors contained in any list of jurors under this Part of this Act, but it shall be competent to summon such jurors only, commencing from the top of the list as may be necessary to ensure a sufficient number for the trial of the cases which shall remain for trial at the date of the citation of the jurors, and such number shall be fixed by the clerk of the court in which the second diet is to be called, or in any case in the High Court by the Clerk of Justiciary, and where jurors are not summoned, from the whole jurors in any list not being required, such jurors shall be placed upon the next list issued, until they have attended to serve.

Jurors to be cited by registered letter or recorded delivery.

98. The sheriff clerk of the sheriffdom in which a sitting of the High Court is to be held, or his depute, or the sheriff clerk of the sheriff court district in which any juror is to be cited, or his depute, where the citation is for a trial before a sheriff, shall fill up and sign a proper citation addressed to each such juror, and shall cause the same to be transmitted to him by letter, sent to him at his place of residence as stated in the roll of jurors by registered post or recorded delivery; and a certificate under the hand of such sheriff clerk, or his depute, of the citation of any jurors or juror in manner herein provided, shall be deemed a legal citation:

Provided that the sheriff clerk of the sheriffdom in which a sitting of the High Court is to be held shall issue citations to the whole jurors required for said sitting, whether said jurors reside in that or in any other sheriffdom.

Fining of jurors for non-attendance.

99.—(1) Persons cited to attend as jurors may be fined if they fail to attend.

(2) A fine imposed under this section at a sitting of the High Court may, on application, be remitted in accordance with the provisions of Schedule 2 to this Act.

No exemptions by sex or marriage from liability to serve as juror.

100.—(1) A person shall not be exempted by sex or marriage from the liability to serve as a juror but any judge may, in his discretion, on an application made by or on behalf of the prosecution or the accused or at his own instance, make an order that the jury shall be composed of men only or of women

PART I

only, as the case may require, or may, on an application made by a woman to be exempted from service on a jury in respect of any case by reason of the nature of the evidence to be given or of the issues to be tried, grant such exemption.

(2) Rules of court may be made by Act of Adjournal—

(*a*) prescribing the manner in which jurors are to be summoned and to be selected from the panel;

(*b*) exempting from attendance as jurors any women who are for medical reasons unfit to attend;

(*c*) as to the procedure to be adopted on any application under this section relating to service on juries;

(*d*) requiring or authorising an application under this section, or any order thereon, to be made in interlocutory proceedings.

The rules of court in relation to the matters referred to in this subsection which are in force at the commencement of this Act are set out in Schedule 3 to this Act.

(3) Any enactment relating to juries which is in force at the commencement of this Act shall have effect subject to the provisions of this section.

Delay in trial

Prevention of delay in trials.

101.—(1) Any prisoner who is in prison on a commitment until liberated in due course of law, and who shall not be served with an indictment within 60 days of such commitment, shall be entitled to give notice to the Lord Advocate through the Crown Agent that, if he is not served with an indictment within 14 days of such notice, the prosecutor will be called on to show cause before the High Court why such accused person should not be released from prison and, upon a note being presented to that court setting forth that such notice has been given and that no indictment has been served within that period of 14 days, the court shall ordain the prosecutor forthwith to show cause as aforesaid and, where cause is not shown to the satisfaction of the court, the court shall grant warrant ordering such person to be released at the expiry of three days from the issuing of such order, unless within said three days an indictment be served upon him.

(2) Where any accused person is liberated as aforesaid, it shall be competent for the prosecutor to raise an indictment against him, and to obtain from a judge of the jurisdiction to which he is cited for the second diet, or a judge of the High Court, a warrant authorising his apprehension and recommitment to prison to await his trial on such indictment, and in the event

of the trial on such indictment not taking place at the second diet thereof, or any other day to which it may be adjourned or postponed by the court, the High Court shall, upon the application of the accused, made by a note addressed to the court, and after hearing parties, consider the whole circumstances of the case, and may in its discretion order the immediate release of the accused, or may grant warrant ordering him to be released on a day named in the warrant, unless he shall on or before such day be remitted to the knowledge of an assize on indictment, or may decline to pronounce any order.

(3) Where the accused has been incarcerated for 80 days, and an indictment is served upon him, and he is detained in custody after expiry of that period of 80 days, then, unless he is brought to trial and the trial concluded within 110 days of the date of his being committed till liberated in due course of law, he shall be forthwith set at liberty and declared for ever free from all question or process for the crime with which he was charged.

(4) Where the accused has been liberated from prison after having been committed till liberated in due course of law, he shall not be detained in prison more than 110 days in all; but unless his trial is brought to a conclusion before the expiry of the 110th day of confinement in prison subsequent to commitment till liberated in due course of law, he shall be forthwith set at liberty and declared for ever free from all question or process for the crime for which he was committed.

(5) Notwithstanding the generality of the foregoing provisions of this section, in any case brought before it under this section, the High Court may order the accused to be kept in custody, with a view to trial, for such further period or periods as to the court may seem just if the court is satisfied that the trial ought to be allowed to proceed after the expiry of the said period of 110 days where the delay in prosecuting to a verdict is due to—

(*a*) the illness of the accused or of a judge or juror,

(*b*) the absence or illness of any necessary witness, or

(*c*) any other sufficient cause for which the prosecutor is not responsible.

Accelerated Trial

Procedure where accused desires to plead guilty.

102.—(1) Where the accused shall give written notice to the Crown Agent through his own procurator that he desires to have his case at once disposed of, and declares his intention to plead guilty, it shall be lawful to serve the accused with

PART I

an indictment and a notice to appear at a diet not less than four clear days after such notice before the sheriff before whom under this Part of this Act he would be cited to a first diet, and it shall not be necessary to lodge or give notice of any list of witnesses or productions.

The notice to appear referred to in this subsection shall be in the form set out in Schedule L to the Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form.

1887 c. 35.

(2) At said diet the sheriff, if any plea of guilty has been accepted by the procurator fiscal, shall deal with the case in like manner as a case where the accused pleads guilty at a first diet:

Provided that if the case is such as can be tried only in the High Court, or is of such an aggravated nature that the sheriff shall hold that the question of punishment should be disposed of by that court, the sheriff shall, by interlocutor written on the record copy of the indictment in the form set out in Schedule M to the said Act of 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form, remit the accused to that court for sentence, and such remit shall be a sufficient warrant to bring the accused, without any further notice, before the High Court for sentence at any sitting at any place that may be convenient, as the Lord Advocate may order, and the original warrant of commitment of such person till liberated in due course of law shall remain in force until he is brought before the High Court for sentence.

(3) If the accused when brought before the sheriff on such indictment shall plead not guilty to the charge or plead guilty only to a part of the charge, and the procurator fiscal shall decline to accept such restricted plea, then the diet shall be deserted *pro loco et tempore*, and thereafter the procedure against the accused may be according to the other provisions of this Part of this Act.

First Diet

Sheriff court case.

103.—(1) At the first diet the procurator fiscal of the district in which such diet is called shall represent Her Majesty's Advocate, unless an advocate depute or the procurator fiscal of the district of the second diet shall do so. Where the case is one the second diet of which is to be in the sheriff court, the sheriff shall proceed according to the existing law and practice as varied by this Part of this Act, and where the sheriff presiding is not the sheriff of the court of the second diet, he shall have all the powers exercised under the existing law and practice by a sheriff at a first diet.

(2) Where the accused pleads guilty in whole or in part, the sheriff shall have power to adjourn the case to another sitting of his court with a view to considering what sentence should be pronounced, whether the case be one the second diet of which is to be called in his own or another court; and where the second diet is fixed for a different court any interlocutor disposing of any preliminary plea, any plea tendered, any interlocutor adjourning the case, or any sentence pronounced shall be written on the record copy of the indictment.

(3) Where the accused pleads guilty to the indictment or any part thereof, he shall be required to sign the same if he be able to write; and in every case the sheriff shall append his signature to the plea recorded.

(4) Where—

(*a*) the accused pleads guilty only to a part of the charge, or to a minor offence included in the charge, and the prosecutor does not accept such plea, or

(*b*) where on a plea of guilty to the whole charge the sheriff shall consider it expedient in the circumstances, whether on the representation of the accused or otherwise, that the sentence to be pronounced should be determined by the sheriff of the district in which the second diet is to be called,

the sheriff shall sign an interlocutor on said record copy in the form set out in Schedule H to the Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form, and the sheriff clerk shall record any interlocutor signed, plea tendered or sentence pronounced, in the books of court, or in a record to be kept for the purpose, and shall forthwith transmit the record copy of the indictment to the sheriff clerk of the district of the court of the second diet. 1887 c. 35.

(5) Nothing contained in this section shall require a plea tendered by or on behalf of a company to be signed.

Remit to High Court for sentence.

104. In any proceedings on indictment in which the second diet is to be in the sheriff court—

(*a*) where the accused shall either at the first or at the second diet plead guilty in whole or in part, and the prosecutor shall accept such plea, or

(*b*) where the accused shall at the second diet be found guilty in whole or in part by verdict of the jury.

the sheriff, if he shall hold that any sentence which he can competently pronounce is inadequate and that the question of punishment should be disposed of by the High Court,—

(i) shall endorse upon the record copy of the indictment a certificate of the plea tendered or of the verdict returned, and

PART I

(ii) shall by interlocutor written on the said record copy remit the accused to the said court for sentence, and

(iii) may, if he shall think fit, append to such interlocutor a note setting forth the reasons for such remit, and such remit shall be of the like force and effect in all respects as a remit in terms of section 102 of this Act.

High Court case.

105.—(1) At the first diet, where the case is one in which the second diet is to be in the High Court, the sheriff shall hear any objection of a preliminary nature, whether to the citation or relevancy or otherwise.

(2) If—

(*a*) the sheriff shall be of opinion, upon any objection made to—

(i) any discrepancy between the record copy of the indictment and the service copy, or

(ii) any error or deficiency in such service copy, or in the notice of citation,

that such discrepancy, error or deficiency could not mislead or prejudice the accused, or

(*b*) he shall be of opinion that any other preliminary objection made is frivolous, or

(*c*) no preliminary objection be made,

the sheriff shall call upon the accused to plead guilty or not guilty, and shall endorse upon the record copy of the indictment a certificate of the plea tendered in the form set out in Schedule I to the Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form.

1887 c. 35.

(3) Where the accused pleads guilty to the indictment or any part thereof, he shall be required to sign the same if he is able to write; and in every case the sheriff shall append his signature to the plea recorded.

(4) Where the sheriff shall hold such a discrepancy, error or deficiency as aforesaid to be one which tends substantially to mislead and prejudice the accused, or where any other preliminary objection shall be held by him not to be frivolous, he shall endorse upon the record copy of the indictment a certificate in the form set out in Schedule K to the said Act of 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form, and the sheriff clerk shall record any certificate so written on such record copy in the books of court or in a record to be

kept for the purpose, and shall forthwith transmit the record copy of the indictment to the Clerk of Justiciary.

(5) Nothing contained in this section shall require a plea tendered by or on behalf of a company to be signed.

Power to convict on plea of guilty to offence other than that charged in indictment.

106. If a person charged on indictment with any crime or offence tenders a plea of guilty of any other crime or offence of which he could competently, by virtue of any enactment, be found guilty on the trial of such indictment, and if the plea is accepted by the prosecutor it shall be competent to convict such person of the crime or offence to which he has so pled guilty and to sentence him accordingly.

Solicitor of place of second diet may defend at both diets.

107. In all cases a solicitor who is entitled to conduct proceedings in the courts of the district of the second diet shall be entitled to appear at the first diet and to conduct the defence, although he may not be entitled to conduct other law business in the locality of the first diet.

Certain objections competent only at first diet.

108. No objection by the accused to the validity of the citation against him, on the ground of any discrepancy between the record copy of the indictment and the copy served on him, or on account of any error or deficiency in such service copy or in the notice of citation, shall be competent unless the same be stated to the sheriff at the first diet before the accused is called upon to plead, and no such discrepancy, error or deficiency shall entitle the accused to object to plead to such indictment unless the sheriff shall be satisfied that the same tended substantially to mislead and prejudice the accused.

Interlocutor of relevancy unnecessary.

109. It shall not be necessary to enter upon the record an interlocutor finding the indictment relevant and, when objections are taken to the relevancy, it shall not be necessary to enter on the record copy of the indictment or in the record any other minute setting forth how such objections were disposed of, except that such objections were sustained or repelled, and such minute shall be signed by the clerk of court.

Where sentence delayed, original warrant of commitment stands.

110. In all cases where the accused pleads guilty at the first diet and is not forthwith sentenced by the sheriff, he shall be detained in custody until he is sentenced, under the existing warrant of commitment, unless the Lord Advocate shall consent to his being suffered to go at large, and, where such consent is given, it shall be on such conditions as to bail as the Lord Advocate shall fix, but no unreasonable delay shall be allowed to take place between the time of the accused pleading guilty and his being brought up for sentence.

PART I

Postponement on old warrant where diet deserted.

111. Where a diet is deserted *pro loco et tempore,* or where a diet is postponed or adjourned, or an order issued for the trial to take place at a different place from that first given notice of, it shall not be necessary that a new warrant should be granted for the incarceration of the accused, but the warrant of commitment on which he is at the time in custody till liberated in due course of law shall continue in force.

Sittings of High Court

Sittings of Court of Justiciary.

112.—(1) All crimes may be tried before any circuit Court of Justiciary by indictment in the same manner as before the High Court at Edinburgh.

(2) All sittings of the Court of Justiciary shall be sittings of the High Court.

Judges in High Court.

113.—(1) Every person who shall be appointed to the office of one of the senators of the College of Justice in Scotland shall, by virtue of such appointment, be a Lord Commissioner of Justiciary in Scotland.

(2) If any difference shall arise as to the rotation of judges in the High Court, the same shall be determined by the Lord Justice General.

(3) Any judge or judges in the High Court may discharge the duty of any circuit court, notwithstanding that such judge or judges may not have been specially named for that duty.

(4) The Lord Justice General, Lord Justice Clerk, or any Lord Commissioner of Justiciary may preside alone at the trial of any panel before the High Court, and when so presiding shall constitute a quorum of the High Court:

Provided that in any trial of difficulty or importance it shall be competent for two or more judges in the High Court to preside.

Power to High Court to determine circuits, etc.

114.—(1) It shall be lawful for the High Court by Act of Adjournal from time to time as to them shall seem necessary after consultation with the Lord Advocate—

(*a*) to alter the existing circuits of the High Court, to form new circuits, and to fix and determine the limits of each existing or new circuit, and the regions and districts or parts thereof which shall be included within the same;

(*b*) to detach any portion of the district exclusively attached to the said High Court sitting at Edinburgh from such district and to include the same in any adjoining circuit or to detach any district from an adjoining district

and to include the same in the district exclusively attached to the said High Court sitting at Edinburgh;

(*c*) to fix and determine the number of circuit courts to be held and the places at which the same shall be held within each such circuit in each year, and to define the periods of the year at which such circuit courts shall be held and to alter the same as occasion shall require, and to appoint the particular dates of such courts; and

(*d*) to make such provision as may be necessary for the carrying out of the powers hereinbefore conferred, including such modifications as may appear to be necessary in the existing statutory provisions for preparing and keeping jury books and for making returns of and summoning jurors to serve on any assize for the trial of criminal cases.

(2) The High Court shall hold such sittings for the trial of criminal cases from time to time as may be necessary on the requisition of the Lord Advocate.

Sitting dispensed with.

115. It shall not be necessary for the High Court to proceed to any town for the purpose of holding any court in use to be held in such town, where there are no cases indicted for the sitting of the court at such town, or when so many of the persons indicted thereto have pleaded guilty before the sheriff at the first diet as to make the holding of a special court inexpedient, and in that event such cases as remain for trial may be ordered to be brought up at another sitting of the High Court in manner provided in section 117 of this Act.

Adjournment of second diet.

116. When the accused who is cited to the High Court for the second diet has pleaded guilty at the first diet, it shall be lawful for any Lord Commissioner of Justiciary in chambers, and without the presence of the prosecutor or person accused, to adjourn the second diet to any other sitting of the High Court.

Sitting transferred where few cases.

117.—(1) Where so many of the persons who have been indicted for any sitting of the High Court have pleaded guilty at the first diet as to make the holding of a separate court for the cases remaining unnecessary, it shall be lawful for any Lord Commissioner of Justiciary, on the petition of the Lord Advocate, and in chambers and without the presence of the prosecutor or the accused, to order the second diets of such cases to be postponed and to be held at any other sitting of the High Court which is about to be held.

PART I

(2) Upon such order for postponement being issued, a notice shall forthwith be served upon the accused, who may have already been cited, in the form set out in Schedule 0 to the 1887 c. 35. Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form.

Trial on adjacent circuit.

118. Where any crime is committed in a circuit district in which no sitting of the High Court falls to be held in ordinary course for some months thereafter, it shall be competent to cite the accused to appear before any earlier sitting of the High Court in an adjacent circuit district.

Place of certain trials.

119. Where, because of the distance of any burgh or town from the town in which the High Court usually sits, or for any other cause, it shall be deemed expedient that trials of persons accused of crimes committed in such burgh or town, or in places adjacent thereto, should be tried there instead of being tried at the town in which the court usually sits, it shall be lawful for the High Court at Edinburgh, on the application of the Lord Advocate, to give all such directions in that behalf as the said court shall think fit; and the sheriff of the sheriff court district within which such burgh or town is situated shall give obedience to all directions so given.

Notification after first diet of intention to plead guilty.

120.—(1) Where an accused, who has pleaded not guilty at the first diet, shall thereafter, at any time before the date appointed for the second diet in the High Court, give written notice to the Crown Agent through his own procurator that he intends to plead guilty to the charge in whole or in part, and the Lord Advocate shall intimate to the Clerk of Justiciary that he is prepared to accept such plea, section 116 of this Act shall apply to the case of the accused in like manner as if he had pleaded guilty at the first diet, and where the accused shall at the second diet tender a plea not in accordance with the notice, and such plea shall not be accepted by the prosecutor, section 122 of this Act shall apply in like manner as it applies to the case where the High Court allows a plea of guilty to be withdrawn or modified.

(2) Sections 115 and 117 of this Act shall apply wherever the number of persons indicted for any sitting of the High Court, who have neither pleaded guilty nor in whose cases such notice and intimation as are mentioned in the foregoing subsection have been given, is such as to render the holding of a special or separate court inexpedient or unnecessary.

Procedure at Trial PART I

Second diet—Transcript of procedure at first diet.

121.—(1) At the calling of the second diet in the sheriff court in the same sheriff court district as the court of the first diet, the procedure shall be in accordance with the existing law and practice as varied by the provisions of this Part of this Act.

(2) When the second diet is in the sheriff court of a different sheriff court district, or in the High Court, the clerk of court shall on the diet being called enter in the books of court, or in a record to be kept for the purpose, a transcript of the procedure at the first diet as endorsed on the record copy of the indictment by the sheriff who presided at that diet, and thereafter, if in the sheriff court, the case shall, after the plea of the accused has been tendered and recorded, proceed in accordance with the existing law and practice as varied by the provisions of this Part of this Act.

Review at second diet in High Court.

122.—(1) Where a person accused is cited to the High Court for the second diet, that court shall have power to review the proceedings at the first diet and the following provisions of this section shall apply.

(2) Where the accused has pleaded guilty to the whole or any part of the charge at the first diet, the High Court may at such second diet, if it shall be shown that such plea was taken—

(*a*) to an incompetent or irrelevant charge, or

(*b*) under substantial error or misconception, or

(*c*) under circumstances which tended to prejudice the accused,

allow such plea to be withdrawn or modified.

(3) Where such plea is so withdrawn or modified, the court shall on the motion of the prosecutor desert the diet *pro loco et tempore*, or postpone the trial to a later date, which shall be notified to the accused in open court.

(4) Where such postponement makes it necessary that the jury for the trial of the case shall be taken from a different list from that of which notice was given to the accused, such list shall be prepared, signed, and kept in the office of the appropriate sheriff clerk within three clear days of such postponement in the manner provided in section 96 of this Act.

PART I
Amendment of indictment.

123.—(1) No trial shall fail or the ends of justice be allowed to be defeated by reason of any discrepancy or variance between the indictment and the evidence.

(2) It shall be competent at any time prior to the determination of the case, unless the court see just cause to the contrary, to amend the indictment by deletion, alteration or addition, so as to cure any error or defect therein, or to meet any objection thereto, or to cure any discrepancy or variance between the indictment and the evidence.

(3) Nothing in this section shall authorise an amendment which changes the character of the offence charged, and, if the court shall be of opinion that the accused may in any way be prejudiced in his defence on the merits of the case by any amendment made under this section, the court shall grant such remedy to the accused by adjournment or otherwise as to the court may seem just.

(4) An amendment made under this section shall be sufficiently authenticated by the initials of the clerk of court.

On plea of guilty, jury to be dispensed with and sentence pronounced.

124. When a person indicted shall plead guilty to the crime or crimes of which he is accused, it shall not be necessary to name a jury for the trial of the case, but the court before which the accused shall be tried shall have power forthwith to pronounce sentence in like manner as if a verdict of guilty had been returned.

Provided that such plea of guilty shall be made in open court, and shall then and there be subscribed by the panel, and shall be authenticated by the signature of the judge.

On plea of not guilty, jury to be balloted and sworn.

125. In the High Court, when the accused pleads not guilty, the clerk of the court shall make an entry in the record, that in respect that the panel pleaded not guilty, the panel was remitted to an assize, and that the following jurymen were balloted for and duly sworn to try the libel, and he shall proceed at once to ballot for and swear the jury.

On plea of not guilty, the indictment need not be read over.

126. When the accused, on being brought to the bar, shall say that he means to plead not guilty, and does not desire that the indictment should be read over, it shall not be necessary to read it over before proceeding with the trial.

PART I

Procedure where trial does not take place.

127.—(1) Where at the second diet—

(*a*) the diet has been deserted *pro loco et tempore* for any of the causes set forth in section 122 of this Act, or

(*b*) an indictment is for any cause not brought to trial and no order has been given by the court postponing such trial or appointing it to be held at a subsequent date at some other sitting of the court,

it shall be lawful at any time within nine clear days after the date of such second diet to give notice to the accused on another copy of the indictment to appear to answer such indictment at a further diet either in the High Court or in the sheriff court when the charge is one that can be lawfully tried in that court, notwithstanding that the original citation to a second diet was to a different court.

(2) The notice referred to in subsection (1) of this section shall be in the form set out in Schedule N to the Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form. 1887 c. 35.

(3) The further diet specified in the notice referred to in subsection (1) of this section shall be not earlier than nine clear days from the giving of such notice.

(4) On or before the day on which such notice is given, a list of jurors shall be prepared, signed and kept by the sheriff clerk of the district to which such notice applies in the manner provided in section 96 of this Act.

Provision for death or illness of judge.

128.—(1) Where the court is unable to proceed owing to the death or illness of the presiding judge, it shall be lawful for the clerk of court—

(*a*) in the case where the diet has not been called, to convene the court and adjourn the diet and any other diet appointed for that sitting to a later sitting;

(*b*) in the case where the diet has been called but no evidence has been led, to adjourn the diet or any other diet appointed for that sitting to a later sitting; and

(*c*) where evidence has been led, to desert the diet *pro loco et tempore* and to discharge the jury;

and any such continuation, adjournment, desertion or other proceeding shall be entered in the record by the clerk of court.

(2) Where a diet is deserted in pursuance of subsection (1)(*c*) of this section the Lord Advocate may raise and insist in

PART I

a new indictment, and in any such case where the accused is in custody it shall not be necessary that a new warrant for his incarceration be granted, and the warrant of commitment on which he is at the time in custody till liberation in due course of law shall continue in force, and in any such case where the accused is at liberty on bail his bail shall continue in force.

Jury to be chosen by ballot in open court.

129. The jurors for the trial of any case shall be chosen in open court by ballot from the list of persons summoned which has been served upon the accused; and for that purpose the clerk of the court shall cause the name and designation of each juror to be written on a separate piece of paper or parchment, all the pieces being of the same size, and shall cause the pieces to be rolled up, as nearly as may be, in the same shape, and to be put into a box or glass and mixed, and the clerk shall draw out the said pieces of paper or parchment one by one from the box or glass; and if any of the persons whose names shall be so drawn shall not appear, or shall be challenged, with or without cause assigned, and set aside, then such further number shall be drawn until the number required for the trial shall be made out; and the persons so drawn and appearing, and being sworn, shall be the jury to try the accused, and their names shall be recorded in the minute book kept by the clerk.

Challenges and objections to jurors.

130.—(1) Each accused on trial may challenge five of the jurors, and the prosecutor may challenge five of the jurors in all, for any one trial, without being obliged to assign any reason therefor.

(2) A challenge of a juror shall be made when the name of that juror is balloted and shall not afterwards be allowed.

(3) Such challenge shall of itself disqualify the person challenged from serving as a juror at the trial.

(4) Nothing in this section shall affect the right of the accused or the prosecutor to object to any juror on cause shown.

(5) If any objection is taken to a juror on cause shown and such objection is founded on the want of sufficient qualification as provided by section 1 of the Jurors (Scotland) Act 1825, such objection shall be proved only by the oath of the juror objected to.

1825 c. 22.

(6) No objection to a juror shall be competent after he has been sworn to serve.

PART I

131. It shall not be competent for the accused or the prosecutor to object to a juror on the ground that such juror has appeared without citation or without having been duly cited to attend.

Juror without citation not to be objected to.

132.—(1) The jurors chosen for any particular trial may, when that trial is disposed of, without any new ballot, serve on the trials of other persons accused, provided that—

Jurors chosen for one trial may continue to serve.

(*a*) such persons and the prosecutor consent thereto,

(*b*) the names of such jurors are contained in the list of assize, and

(*c*) such jurors are duly sworn to serve on each successive trial.

(2) Where the trials referred to in subsection (1) of this section are in the High Court, the clerk of court shall at the commencement of the first of such trials engross the names and designations of the jurors in the record thereof, and in the record of the subsequent trial or trials it shall be sufficient to mention that the jurors who passed upon the preceding trial or trials also passed upon the assize of the panel or panels then under trial, no objection having been made to the contrary, the said jurors being always sworn together in presence of each panel or set of panels respectively.

133. The court shall have power to excuse any juror from serving on any trial, the grounds of such excuse being stated in open court.

Jurors may be excused.

134. Where in the course of any trial any juror dies, or the court is satisfied that any juror is, through illness or for any other reason, unfit to continue to serve as a juror, the court may in its discretion, on application made by or on behalf of the Lord Advocate or an accused, direct that the trial shall proceed before the remaining jurors (if they shall be not less than twelve in number), and where any such direction is given the remaining jurors shall be deemed in all respects to be a properly constituted jury for the purpose of the trial and shall have power to return a verdict accordingly whether unanimous or by majority:

Provision for death or illness of jurors.

Provided that the remaining jurors shall not be entitled to return a verdict of guilty by majority unless at least eight of their number are in favour of such verdict and if, in any such case, the remaining jurors shall inform the court that fewer than eight of their number are in favour of a verdict of guilty, and that there is not a majority in favour of any other verdict, they shall be deemed to have returned a verdict of not guilty.

PART I

Clerk to state charge, and swear jury.

135. When a jury has been balloted, the clerk of court shall inform the jury of the charge against the accused either by reading the same in the words of the indictment (with the substitution of the third person for the second) or, if the presiding judge shall, because of the length or complexity of the indictment, so direct, by reading to the jury a summary of the charge approved by the judge; and the clerk of court shall thereafter administer the oath in common form; and it shall not be necessary to lay before the jury copies of the indictment, list of witnesses or list of productions, but it shall nevertheless be competent to the presiding judge, if he shall think fit, to direct that copies of the indictment (without any list of witnesses or of productions appended) shall be laid before the jury.

Trial to be continuous.

136. Every trial shall proceed from day to day till concluded unless the court shall see cause to adjourn over a day or days.

Seclusion of jury.

137. It shall not be necessary, when for any cause a trial which is proceeding is adjourned from one day to another, that the jury shall be secluded during the adjournment, except in cases where the court shall see fit, whether *ex proprio motu* or on the motion of the prosecutor or the accused, to order that the jury be kept secluded.

Witnesses not to be excluded by reason of conviction, interest, etc.

138.—(1) No person adduced as a witness shall be excluded from giving evidence by reason of having been convicted of or having suffered punishment for crime, or by reason of interest, or by reason of agency or of partial counsel, or by reason of having appeared without citation or without having been duly cited to attend, or by reason of having been precognosced subsequently to the date of citation.

(2) Every person so adduced, who is not otherwise by law disqualified from giving evidence, shall be admissible as a witness, notwithstanding any objection offered on any of the above-mentioned grounds.

(3) Nothing in this section shall prevent such witness from being examined on any point tending to affect his credibility.

(4) Where any person who is or has been an agent of the accused shall be adduced and examined as a witness for the accused, it shall not be competent to the accused to object, on the ground of confidentiality, to any question proposed to be put to such witness on matter pertinent to the issue of the guilt of the accused.

PART I

Witnesses admissible notwithstanding relationship to parties.

139. It shall be no objection to the admissibility of any witness that he or she is the father, mother, son, daughter, brother or sister, by consanguinity or affinity, or uncle, aunt, nephew or niece, by consanguinity of any party adducing such witness in any trial; nor shall it be competent to any witness to decline to be examined and give evidence on the ground of any such relationship.

Presence in court not to disqualify witnesses in certain cases.

140. In any trial the court need not reject any witness against whom it is objected that he has, without the permission of the court, and without the consent of the party objecting, been present in court during the proceedings; but the court may, in its discretion, admit the witness, where it appears to the court that the presence of the witness was not the result of culpable negligence or criminal intent, and that the witness has not been unduly instructed or influenced by what took place during his presence, or that injustice will not be done by his examination.

Accused and spouse competent witnesses for defence.

141. The accused and the spouse of the accused shall be competent witnesses for the defence at every stage of the case, whether the accused is on trial alone or along with a co-accused:

Provided that—

(*a*) the accused shall not be called as a witness in pursuance of this section except upon his own application;

(*b*) the failure of the accused or the spouse of the accused to give evidence shall not be commented upon by the prosecution;

(*c*) the spouse of the accused shall not, save as mentioned in section 143 of this Act, be called as a witness in pursuance of this section except upon the application of the accused;

(*d*) nothing in this section or in section 143 of this Act shall compel a spouse to disclose any communication made to him or her by the other spouse during the marriage;

(*e*) the accused who gives evidence on his own behalf in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged;

(*f*) the accused who gives evidence on his own behalf in pursuance of this section shall not be asked, and if

PART I

asked shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless—

(i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged; or

(ii) the accused or his counsel or solicitor has asked questions of the witnesses for the prosecution with a view to establish the accused's good character, or the accused has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of the witnesses for the prosecution; or

(iii) the accused has given evidence against any other person charged with the same offence;

(*g*) every person called as a witness in pursuance of this section or section 143 of this Act shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

Evidence of accused.

142. Where the only witness to the facts of the case called by the defence is the accused, he shall be called as a witness immediately after the close of the evidence for the prosecution.

Spouse as witness in certain cases.

143.—(1) The spouse of a person charged with—

(*a*) bigamy,

(*b*) any offence mentioned in Schedule 1 to this Act or

(*c*) any offence under any enactment mentioned in Schedule 4 to this Act,

may be called as a witness either for the prosecution or for the defence without the consent of the person charged.

(2) Nothing in this section or in section 141 or 346 of this Act shall affect a case where the spouse of a person charged with an offence may at common law be called as a witness without the consent of that person.

Notice of spouse as witness.

144. In a case where a list of witnesses is required, the husband or wife of the accused shall not be called as a witness for the defence unless notice has been given in the terms prescribed by section 82 of this Act.

PART I

Trial in open court.

145.—(1) Without prejudice to section 174 of this Act, no part of a trial shall take place outwith the presence of the accused.

(2) Where a debate has taken place on the relevance of an indictment, the judge shall give his decision as to relevance in open court in the presence of the accused.

(3) From the commencement of the leading of evidence in a trial for rape or the like the judge may, if he thinks fit, cause all persons other than the accused and counsel and solicitors to be removed from the court-room.

(4) Any person who interrupts or disturbs the court shall be liable to imprisonment or a fine or both as the judge thinks fit.

Sheriff's notes of evidence.

146. The sheriff who has presided at a trial shall duly authenticate and preserve the notes of the evidence taken by him in the trial and, if called upon to do so by the High Court, shall exhibit them, or a certified copy thereof, to the High Court.

Witness may be examined, etc., as to having previously made a different statement.

147. In any trial, any witness may be examined as to whether he has on any specified occasion made a statement on any matter pertinent to the issue at the trial different from the evidence given by him in such trial; and in such trial evidence may be led to prove that such witness has made such different statement on the occasion specified.

Examination of witness.

148. In any trial, it shall be competent for the party against whom a witness is produced and sworn in causa to examine such witness, not in cross only, but also in causa.

Witness may be recalled.

149. In any trial, on the motion of either party, the presiding judge may permit a witness who has been examined to be recalled.

Admissions and agreements as to evidence.

150.—(1) In any trial, where the accused is legally represented, it shall not be necessary for the accused or for the prosecutor to prove any fact which is admitted by the other, or to prove any document, the terms and application of which are not in dispute between them; and a copy of any document may, where they so agree, be accepted as equivalent to the original document.

(2) For the purposes of the foregoing subsection any admission or agreement shall be made by lodging with the clerk of court a minute in that behalf signed—

(*a*) in the case of an admission, by the person making the admission if he is the prosecutor, or by his counsel or solicitor if that person is the accused, and

(*b*) in the case of an agreement, by the prosecutor and the counsel or solicitor of the accused.

PART I

(3) Where a minute has been signed and lodged as aforesaid, any facts and documents admitted or agreed thereby shall be deemed to have been duly proved; and a copy of any document so agreed to be accepted as equivalent to the original document shall be accepted as so equivalent.

Declarations to be received in evidence without being sworn to by witnesses.

151.—(1) The declaration of the accused, the formal parts of which may be written or printed, or partly written and partly printed, duly authenticated by a justice as having been emitted before him according to the existing law and practice, shall be received in evidence without being sworn to by witnesses, and it shall not be necessary to insert the names of any witnesses to the declaration in any list of witnesses, either for the prosecution or for the defence.

(2) It shall be competent for the defence, before such declaration is read to the jury, to adduce as witnesses the persons who were present when the declaration was emitted, and to examine them upon any matters regarding such declaration on which it would be competent to examine them according to the existing law and practice, and to move the court to refuse to allow the declaration to be read on grounds appearing on the face of the declaration itself, or on the ground of what is disclosed in such evidence or on both of these grounds, and where the defence objects to the declaration, the prosecutor shall be entitled to examine any witnesses in regard thereto, whom the defence may be entitled to examine as aforesaid.

Defence to speak last.

152. In any trial the accused or, where he is legally represented, his counsel or solicitor shall have the right to speak last.

Seclusion of jury, etc., after retiral.

153.—(1) As soon as the whole case for the prosecution and defence has been heard by the court, if any of the jurors has any doubt which he would like resolved, he shall raise the same in the presence of the accused in court before retiring to the jury room.

(2) When the jury retire to consider their verdict, the clerk of court shall enclose the jury in a room by themselves and neither he nor any other person shall be present with the jury after they are enclosed.

(3) No person shall visit the jury on the pretext of further information, of resolving any doubt or on any other pretext or for any other purpose whatever; nor shall the jury come out of the jury room for any cause whatever or adjourn until they return their verdict except where they may wish to have a direction from the judge or to make any request regarding any matter in the cause as, for example, to make available any production for examination by the jury.

(4) If any prosecutor or other person contravenes the provisions of this section, the accused shall be acquitted of the crime with which he is charged.

PART I

Oral verdicts to be returned by juries.

154. The verdict of the jury, whether the jury are unanimous or not, shall be returned orally by the foreman of the jury unless the court shall direct a written verdict to be returned:

Provided that where the jury are not unanimous in their verdict, the foreman shall announce that fact so that the relative entry may be made in the record; and provided also that after the jury are enclosed, none of the jurors shall be allowed to separate or to hold communication with other persons until their verdict shall have been returned in their presence by the foreman.

Verdicts may be returned by juries without retiring.

155. It shall be lawful for the court to receive a verdict from a jury orally through the foreman of the jury after consultation in the jury box, although the said verdict be not arrived at after the jury shall have been enclosed, and to cause the same to be taken down and recorded; and, in a case where the jury retire and are enclosed to consider their verdict, it shall also be lawful for the court to receive such verdict orally through the foreman of the jury, in presence of the panel, provided the judge is then sitting in court, so that the jury may straightaway repair to the presence of the court attended by an officer of the court.

Interruption of trial for verdict in earlier trial.

156.—(1) When in any criminal trial the jury shall have retired to consider their verdict, and, owing to delay in returning their verdict or for other sufficient reason, the diet in another criminal cause has been called, then, subject to the following provisions of this section, it shall be lawful to interrupt the proceedings in such other cause—

(*a*) in order to receive the verdict of the jury in the preceding trial, and thereafter to dispose of the cause either by passing sentence upon the panel, or by postponing sentence, or by assoilzing the panel, as the case may be;

(*b*) to give a direction to the jury in the preceding trial upon any matter upon which the jury may wish a direction from the judge or to hear any request from the jury regarding any matter in the cause, as, for example, to make available any production for examination by the jury.

(2) Whether in any cause interruption shall be allowed shall be a matter in the discretion of the judge who presides at the trial.

(3) In no case shall the verdict of the jury in the preceding trial be returned, or sentence be imposed upon the panel, or any direction be asked or given, or any request be heard or granted, in the presence of the jury in the interrupted trial, but in every case such jury shall be directed to retire by the presiding judge.

PART I

(4) In the case of any such interruption a minute of continuation of the diet of the interrupted trial shall be entered in the minute book of the court, and it shall be sufficient that the minute shall bear that the diet be continued until later in the same day without further specification of time, or to the following or a subsequent day as the court may direct.

(5) The court may remand the jury in the preceding trial, and order them to be re-enclosed and to prepare a verdict in writing.

(6) On the interrupted trial being resumed the diet shall be called de novo.

Interruption of trial for plea or sentence in another cause.

157.—(1) Where in any cause the diet of which has not been called, the panel shall intimate through his counsel to the clerk of court that he is prepared to tender a plea of guilty as libelled or such qualified plea as the Crown is prepared to accept, or where a cause is remitted to the High Court for sentence in which the panel has pleaded guilty under section 102 of this Act, then, subject to the following provisions of this section, any trial (other than a trial for murder) then proceeding may be interrupted for the purpose of receiving such plea or dealing with said remitted cause and pronouncing sentence or otherwise disposing of any such cause.

(2) In the case of any such interruption an entry will be duly made in the minute book of the court continuing the diet of the interrupted trial until later in the same day without further specification of time, or to the following or a subsequent day as the court may direct.

(3) In any such interposed cause, the plea of the panel shall not be tendered or accepted, nor sentence passed, in the presence of the jury in the interrupted trial, but said jury if not already retired shall be directed by the presiding judge to retire.

No proceeding under section 156 or 157 of this Act to be deemed an irregularity.

158. In any case provided for by section 156 or 157 of this Act the interruption thereby occasioned in the proceedings of the court shall not be deemed any irregularity, nor entitle the panel to take any objection to the proceedings.

Previous convictions.

159.—(1) A previous conviction may not be libelled as an aggravation of an offence.

(2) Where a person is convicted of an offence, the court may have regard to any previous conviction in respect of that person in deciding on the disposal of the case.

(3) Nothing in this section shall affect the sentence which a court may pass on a second or subsequent conviction.

PART I

Laying of previous convictions before jury.

160.—(1) Previous convictions against the accused shall not be laid before the jury, nor shall reference be made thereto in presence of the jury before the verdict is returned.

(2) Nothing in this section shall prevent the prosecutor from laying before the jury evidence of previous convictions where, by the existing law, it is competent to lead evidence of such previous convictions as evidence in causa in support of the substantive charge, or where the accused shall lead evidence to prove previous good character

(3) It shall not be necessary for the jury to return a verdict finding whether previous convictions against the accused have been proved or not.

Laying of previous convictions before judge.

161.—(1) Previous convictions shall not be laid before the presiding judge until the prosecutor moves for sentence, and in that event the prosecutor shall lay before the judge a copy of the notice referred to in subsection (2) or (4) of section 68 of this Act.

(2) On the conviction of the accused it shall be competent for the court to amend a notice of previous convictions so laid by deletion or alteration for the purpose of curing any error or defect therein:

Provided that no such amendment shall be made to the prejudice of the accused.

(3) Where any such intimation as is mentioned in section 68 of this Act is given by the accused, it shall be competent to prove any previous conviction included therein in the manner set forth in section 162 of this Act, and the provisions of the said section shall apply accordingly.

(4) Any conviction which is admitted in evidence by the court shall be entered in the record of the trial.

(5) Nothing in this section or in section 68 of this Act shall prevent evidence of previous convictions being led in any case where such evidence is competent in support of a substantive charge.

Extract convictions to be received and manner of proof.

162.—(1) An extract conviction of any crime committed in any part of the United Kingdom, bearing to be under the hand of the officer in use to give out such extract conviction, shall be received in evidence without being sworn to by witnesses.

(2) It shall be competent to prove by a witness or witnesses such previous conviction, or any facts relevant to the admissibility of the same, although the name of any such witness is not included in the list served on the accused; and the accused shall be entitled to examine witnesses in regard thereto.

PART I

(3) An official of any prison in which the accused may have been confined on such conviction shall be a competent and sufficient witness to prove the application thereof to the accused, although he may not have been present in court at the trial to which such conviction relates.

Extract conviction to be issued by clerk having record copy of indictment.

163. Where the accused is convicted on indictment in the sheriff court of any crime and an extract of that conviction is subsequently required in evidence, such extract shall be issued by the clerk of the court having the custody of the record copy of the indictment although the plea of the accused may have been taken and the sentence on him pronounced in another court.

Proof of previous convictions by fingerprints.

164.—(1) A previous conviction may be proved against any person in any criminal proceedings by the production of such evidence of the conviction as is mentioned in this section and by showing that his fingerprints and those of the person convicted are the fingerprints of the same person.

(2) A certificate purporting to be signed by or on behalf of the Chief Constable of Strathclyde or the Commissioner of Police of the Metropolis, containing particulars relating to a conviction extracted from the criminal records kept by the person by or on whose behalf the certificate is signed, and certifying that the copies of the fingerprints contained in the certificate are copies of the fingerprints appearing from the said records to have been taken in pursuance of regulations for the time being in force under section 11 of the Prisons (Scotland) Act 1952, or under section 16 of the Prison Act 1952, from the person convicted on the occasion of the conviction or on the occasion of his last conviction, shall be sufficient evidence of the conviction or, as the case may be, of his last conviction and of all preceding convictions and that the copies of the fingerprints produced on the certificate are copies of the fingerprints of the person convicted.

1952 c. 61.
1952 c. 52.

(3) Where a person has been apprehended and detained in the custody of the police in connection with any criminal proceedings, a certificate purporting to be signed by the chief constable concerned or a person authorised on his behalf, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.

(4) A certificate purporting to be signed by or on behalf of the governor of a prison or of a remand centre in which any person has been detained in connection with any criminal proceedings, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be

sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.

(5) A certificate purporting to be signed by or on behalf of the Chief Constable of Strathclyde, and certifying that the fingerprints, copies of which are certified as aforesaid by or on behalf of the Chief Constable or the Commissioner of Police of the Metropolis to be copies of the fingerprints of a person previously convicted and the fingerprints certified by or on behalf of a chief constable or a governor as aforesaid, or otherwise shown, to be the fingerprints of the person against whom the previous conviction is sought to be proved, are the fingerprints of the same person, shall be sufficient evidence of the matter so certified.

(6) The method of proving a previous conviction authorised by this section shall be in addition to any other method of proving the conviction.

Procedure at trial involving children

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

165. 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 nothing in this section shall authorise the and other persons required to attend at any court for purposes connected with their employment.

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

166.—(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 members or officers of the court or parties to the case, their counsel or solicitors, or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of that witness:

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.

PART I

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

167. 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.

Power of court, in respect of certain offences against a child, to refer child to reporter.

1937 c. 37.

1968 c. 49.

168. Any court by or before which a person is convicted of having committed in respect of a child any of the offences mentioned in Schedule 1 to this Act or any offence under section 21 of the Children and Young Persons (Scotland) Act 1937 may refer the child to the 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 Social Work (Scotland) Act 1968.

Power to prohibit publication of certain matter.

169.—(1) In relation to any proceedings in any court, the court may direct that—

(*a*) no newspaper report of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any person under the age of 17 years concerned in the proceedings, either as being the person by or against or in respect of whom the proceedings are taken, or as being a witness therein;

(*b*) no picture shall be published in any newspaper as being or including a picture of any person under the age of 17 years so concerned in the proceedings;

except in so far (if at all) as may be permitted by the direction of the court.

(2) Any person who publishes any matter in contravention of any such direction shall on summary conviction be liable in respect of each offence to a fine not exceeding £50.

(3) This section shall, with the necessary modifications, apply in relation to sound and television broadcasts as it applies in relation to newspapers.

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

Age of criminal responsibility.

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

Presumption and determination of age of child.

171.—(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

PART I

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 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 Children and Young Persons (Scotland) Act 1937 be deemed not to be a child.

1937 c. 37.

(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 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.

1968 c. 49.

(3) Where in any indictment for any offence under the Children and Young Persons (Scotland) Act 1937 or any of the offences mentioned in Schedule 1 to this Act, except an offence under the Criminal Law Amendment Act, 1885, 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 Children and Young Persons (Scotland) Act 1937 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 indictment for any offence under the 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 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.

PART I

(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.

Welfare of child.

172. 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.

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

173.—(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 reporter of the local authority to arrange for the disposal of the case by a children's hearing; or

(*b*) on that plea or finding may request the reporter of the local authority 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 reporter of the local authority 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 reporter under this section, the jurisdiction of the court in respect of the child shall cease, and his case shall stand referred to a children's hearing.

(5) Nothing in the provisions of this section shall apply to a case in respect of an offence the sentence for which is fixed by law.

Procedure at trial of persons suffering from mental disorder

Insanity in bar of trial or as the ground of acquittal.

174.—(1) Where any person charged on indictment with the commission of an offence is found insane so that the trial of that person upon the indictment cannot proceed, or if in the course of the trial of any person so indicted it appears to the

PART I

jury that he is insane, the court shall direct a finding to that effect to be recorded.

(2) Where in the case of any person charged as aforesaid evidence is brought before the court that that person was insane at the time of doing the act or making the omission constituting the offence with which he is charged and the person is acquitted, the court shall direct the jury to find whether the person was insane at such time as aforesaid, and to declare whether the person was acquitted by them on account of his insanity at that time.

(3) Where the court has directed that a finding be recorded in pursuance of subsection (1) of this section, or where a jury has declared that a person has been acquitted by them on the ground of his insanity in pursuance of the last foregoing subsection, the court shall order that the person to whom that finding or that acquittal relates shall be detained in a State hospital or such other hospital as for special reasons the court may specify.

(4) An order for the detention of a person in a hospital under this section shall have the like effect as a hospital order (within the meaning of section 175(3) of this Act) together with an order restricting his discharge, made without limitation of time; and where such an order is given in respect of a person while he is in the hospital, he shall be deemed to be admitted in pursuance of, and on the date of, the order.

(5) Where it appears to a court that it is not practicable or appropriate for the accused to be brought before it for the purpose of determining whether he is insane so that his trial cannot proceed, then, if no objection to such a course is taken by or on behalf of the accused, the court may order that the case be proceeded with in his absence.

Power of court to order hospital admission or guardianship.

175.—(1) Where a person is convicted in the High Court or the sheriff court of an offence, other than an offence the sentence for which is fixed by law, punishable by that court with imprisonment, and the following conditions are satisfied, that is to say—

(*a*) the court is satisfied, on the written or oral evidence of two medical practitioners (complying with the provisions of section 176 of this Act) that the offender is suffering from mental disorder of a nature or degree which, in the case of a person under 21 years of age, would warrant his admission to a hospital or his reception into guardianship under Part IV of the Mental Health (Scotland) Act 1960, and

1960 c. 61.

(*b*) the court is of opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the

PART I

most suitable method of disposing of the case is by means of an order under this section,

the court may by order authorise his admission to and detention in such hospital as may be specified in the order or, as the case may be, place him under the guardianship of such local authority or of such other person approved by a local authority as may be so specified:

Provided that, where his case is remitted by the sheriff to the High Court for sentence under any enactment, the power to make an order under this subsection shall be exercisable by that court.

(2) Where it appears to the prosecutor in any court before which a person is charged with an offence that the person may be suffering from mental disorder, it shall be the duty of such prosecutor to bring before the court such evidence as may be available of the mental condition of that person.

(3) An order for the admission of a person to a hospital (in this Act, referred to as " a hospital order ") shall not be made under this section in respect of an offender unless the court is satisfied that that hospital, in the event of such an order being made by the court, is available for his admission thereto within 28 days of the making of such an order.

(4) A State hospital shall not be specified in a hospital order in respect of the detention of a person unless the court is satisfied, on the evidence of the medical practitioners which is taken into account under paragraph (*a*) of subsection (1) of this section, that the offender, on account of his dangerous, violent or criminal propensities, requires treatment under conditions of special security, and cannot suitably be cared for in a hospital other than a State hospital.

(5) An order placing a person under the guardianship of a local authority or of any other person (in this Act referred to as " a guardianship order ") shall not be made under this section unless the court is satisfied that that authority or person is willing to receive that person into guardianship.

(6) A hospital order or guardianship order shall specify the form of mental disorder, being mental illness or mental deficiency or both, from which, upon the evidence taken into account under paragraph (*a*) of subsection (1) of this section, the offender is found by the court to be suffering; and no such order shall be made unless the offender is described by each of the practitioners, whose evidence is taken into account as aforesaid, as suffering from the same form of mental disorder, whether or not he is also described by either of them as suffering from the other form.

PART I

(7) Where an order is made under this section, the court shall not pass sentence of imprisonment or impose a fine or make a probation order in respect of the offence, but may make any other order which the court has power to make apart from this section; and for the purposes of this subsection "sentence of imprisonment" includes any sentence or order for detention.

Requirements as to medical evidence.

176.—(1) Of the medical practitioners whose evidence is taken into account under section 175(1)(*a*) of this Act, at least one shall be a practitioner approved for the purposes of section 27 of the Mental Health (Scotland) Act 1960 by a Health Board as having special experience in the diagnosis or treatment of mental disorder. 1960 c. 61.

(2) For the purposes of the said section 175(1)(*a*) a report in writing purporting to be signed by a medical practitioner may, subject to the provisions of this section, be received in evidence without proof of the signature or qualifications of the practitioner; but the court may, in any case, require that the practitioner by whom such a report was signed be called to give oral evidence.

(3) Where any such report as aforesaid is tendered in evidence, otherwise than by or on behalf of the accused, then—

(*a*) if the accused is represented by counsel or solicitor, a copy of the report shall be given to his counsel or solicitor;

(*b*) if the accused is not so represented, the substance of the report shall be disclosed to the accused or, where he is a child under 16 years of age, to his parent or guardian if present in court;

(*c*) in any case, the accused may require that the practitioner by whom the report was signed be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by or on behalf of the accused;

and where the court is of opinion that further time is necessary in the interests of the accused for consideration of that report, or the substance of any such report, it shall adjourn the case.

(4) For the purpose of calling evidence to rebut the evidence contained in any such report as aforesaid, arrangements may be made by or on behalf of an accused person detained in a hospital for his examination by any medical practitioner, and any such examination may be made in private.

Supplementary provisions as to hospital orders.

177. The court by which a hospital order is made may give such directions as it thinks fit for the conveyance of the patient to a place of safety and his detention therein pending

PART I

his admission to the hospital within the period of 28 days referred to in section 175(3) of this Act; but a direction for the conveyance of a patient to a residential establishment provided by a local authority under Part IV of the Social Work (Scotland) Act 1968 shall not be given unless the court is satisfied that that authority is willing to receive the patient therein.

1968 c. 49.

Power of court to restrict discharge from hospital.

178.—(1) Where a hospital order is made in respect of a person, and it appears to the court, having regard to the nature of the offence with which he is charged, the antecedents of the person and the risk that as a result of his mental disorder he would commit offences if set at large, that it is necessary for the protection of the public so to do, the court may, subject to the provisions of this section, further order that the person shall be subject to the special restrictions set out in section 60(3) of the Mental Health (Scotland) Act 1960, either without limit of time or during such period as may be specified in the order.

1960 c. 61.

(2) An order under this section (in this Act referred to as "an order restricting discharge") shall not be made in the case of any person unless the medical practitioner approved by the Health Board for the purposes of section 27 of the Mental Health (Scotland) Act 1960, whose evidence is taken into account by the court under section 175(1)(*a*) of this Act, has given evidence orally before the court.

(3) Where an order restricting the discharge of a patient is in force, a guardianship order shall not be made in respect of him; and where the hospital order relating to him ceases to have effect by virtue of section 58(4) of the Mental Health (Scotland) Act 1960 on the making of another hospital order, that order shall have the same effect in relation to the order restricting discharge as the previous hospital order, but without prejudice to the power of the court making that other hospital order to make another order restricting discharge to have effect on the expiration of the previous such order.

CONVICTION AND SENTENCE

Adjournment and remand

Power of court to adjourn a case before sentence.

179. 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: PART I

Provided that a court shall not for the purpose aforesaid adjourn the hearing of a case for any single period exceeding three weeks.

Remand for inquiry into physical or mental condition.

180.—(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 shall remand him in custody or on bail 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.

(2) Where a person is remanded on bail under this section, bail shall be found by bail bond, and it shall be a condition of the bond 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 bond so specifies, two such practitioners; and

(*b*) for the purpose attend at an institution or place, or on any such practitioner specified in the bond 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 bond 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) Where a person remanded on bail under this section fails to comply with any such condition of the bond as is mentioned in the last foregoing subsection, the bail may be forfeited.

(4) On exercising the powers conferred by this section the court shall—

(*a*) where the person is remanded in custody, send to the institution or place in which he is detained, and

PART I

(*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.

Admonition and discharge

Admonition.

181. A court may, if it appears to meet the justice of the case, dismiss with an admonition any person found guilty by the court of any offence.

Absolute discharge.

182. 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.

Probation

Probation.

183.—(1) 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 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 one nor more than three years.

(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 necessary for securing the good conduct of the offender or for preventing a repetition by him of the offence or the commission of other offences.

(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—

(*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.

(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) or (5) 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 cause copies thereof to be given to the officer of the local authority who is to supervise the probationer, to the probationer, and to the person in charge of any institution or place in which the probationer is required to reside under the probation order.

Probation orders requiring treatment for mental condition. 1960 c. 61.

184.—(1) Where the court is satisfied, on the evidence of a registered medical practitioner approved for the purposes of section 27 of the Mental Health (Scotland) Act 1960, 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 Part V of that Act,

PART I

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 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 Mental Health (Scotland) Act 1960, not being a State hospital within the meaning of the Act; 1960 c. 61.

(*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 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) While the probationer is under treatment as a resident patient in pursuance of a requirement of the probation order, any officer responsible for his supervision shall carry out the supervision to such extent only as may be necessary for the purpose of the discharge or amendment of the order.

(5) Where the medical practitioner by whom or under whose direction a probationer is being treated for his mental condition in pursuance of a probation order is of opinion that part of the treatment can be better or more conveniently given in or at an institution or place not specified in the order, being an institution or place in or at which the treatment of the probationer will be given by or under the direction of a registered medical practitioner, he may, with the consent of the probationer, make arrangements for him to be treated accordingly; and the arrangements may provide for the probationer to receive part of his treatment as a resident patient in an institution or place notwithstanding that the institution or place is not one which could have been specified in that behalf in the probation order.

(6) Where any such arrangements as are mentioned in the last foregoing subsection are made for the treatment of a probationer—

(*a*) the medical practitioner by whom the arrangements are made shall give notice in writing to any officer responsible for the supervision of the probationer, specifying the institution or place in or at which the treatment is to be carried out; 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.

Discharge and amendment of probation orders.

185.—(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.

Failure to comply with requirement of probation order.

186.—(1) If, on information on oath from the officer supervising the probationer, 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*) without prejudice to the continuance in force of the probation order, impose a fine not exceeding £20; or

(*b*) (i) where the probationer has been convicted for the offence for which the order was made, sentence him for that offence;

PART I

(ii) where the probationer has not been so convicted, convict him and sentence him as aforesaid; or

(*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.

(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.

Commission of further offence.

187.—(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 such 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.

PART I
Probation orders relating to persons residing in England.

188.—(1) Where the court by which a probation order is made under section 183 of this Act is satisfied that the offender has attained the age of 17 years 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; and that area shall be named in the order.

(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 that the probationer has attained the age of 17 years and proposes to reside or is residing in England, 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; 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 section 3(2) of the 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 section 3 of the said Act of 1973 respectively; and 1973 c. 62.

(*b*) subsections (4) to (6) of section 3 of 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 the Powers of Criminal Courts Act 1973 (except section 8 of that Act) shall apply to the order as if it were a probation order made under section 2 of that Act:

Provided that section 6(2)(*a*), (3)(*d*) and (6) of that Act shall not apply to any such order and section 6(4) and (5) of that

PART I

Act shall have effect respectively in relation to any such order as if for the first reference in section 6(4) to the Crown Court there were substituted a reference to a court in Scotland and as if for the second such reference therein and for both such references in section 6(5) there were substituted references to the court in Scotland by which the probation order was made or amended under this section.

(5) If it appears on information to a justice acting for the petty sessions area for which the supervising court within the meaning of the Powers of Criminal Courts Act 1973 acts that a person in whose case a probation order has been made or amended under this section 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 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.

1973 c. 62.

Further provisions as to probation orders.

189.—(1) Where the court by which a probation order is made under section 183 of this Act or subsection (6) of this section is satisfied that the person to whom the order relates is under the age of 17 years and resides or will reside in England, subsection

PART I

(2) of the said section 183 shall not apply to the order but the order shall name the petty sessions area in which that person resides or will reside and the court shall send notification of the order to the clerk to the justices for that area.

(2) Where a probation order has been made under section 183 of this Act or subsection (6) of this section and the court which made the order or the appropriate court is satisfied that the person to whom the order relates is under the age of 17 years and proposes to reside or is residing in England, the power of that court to amend the order under Schedule 5 to this Act shall include power, without summoning him and without his consent, to insert in the order the name of the petty sessions area aforesaid; and where the court exercises the power conferred on it by virtue of this subsection it shall send notification of the order to the clerk aforesaid.

(3) A court which sends a notification to a clerk in pursuance of the foregoing provisions of this section shall send to him with it three copies of the probation order in question and such other documents and information relating to the case as it considers likely to be of assistance to the juvenile court mentioned in the following subsection.

(4) It shall be the duty of the clerk to whom a notification is sent in pursuance of the foregoing provisions of this section to refer the notification to a juvenile court acting for the petty sessions area named in the order, and on such a reference the court—

(*a*) may make a supervision order under the Children and Young Persons Act 1969 in respect of a person to whom the notification relates; and 1969 c. 54.

(*b*) if it does not make such an order, shall dismiss the case.

(5) A supervision order made by virtue of the last foregoing subsection shall not include a requirement authorised by section 12 of the said Act of 1969 unless the supervised person is before the court when the supervision order is made, and in relation to a supervision order made by virtue of that subsection—

(*a*) section 15 of that Act shall have effect as if, in subsection (4), paragraph (*b*) and the words following it were omitted; and

(*b*) section 17(*a*) of that Act shall have effect as if the second reference to the supervision order were a reference to the probation order in consequence of which the supervision order is made;

and when a juvenile court disposes of a case referred to it in pursuance of the last foregoing subsection, the probation order

PART I

in consequence of which the reference was made shall cease to have effect.

1968 c. 49.

(6) The court which, in pursuance of subsection (1) of section 73 of the Social Work (Scotland) Act 1968, considers a case referred to it in consequence of a notification under paragraph (i) of that subsection (which relates to a case in which a person subject to a supervision order made by virtue of this section moves to Scotland)—

(*a*) may, if it is of opinion that the person to whom the notification relates should continue to be under supervision, make a probation order in respect of him for a period specified in the order; and

(*b*) if it does not make such an order, shall dismiss the case;

and when the court disposes of a case in pursuance of this subsection the supervision order aforesaid shall cease to have effect.

(7) Notwithstanding any provision to the contrary in section 183 of this Act, a probation order made by virtue of the last foregoing subsection which includes only requirements having the like effect as any requirement or provision of the supervision order to which the notification relates may be made without summoning the person to whom the notification relates and without his consent, and shall specify a period of supervision which shall expire not later than the date on which that supervision order would have ceased to have effect by the effluxion of time; and, except as aforesaid, the provisions of this Act shall apply to that probation order.

(8) In this and the last foregoing section "petty sessions area" has the same meaning as in the said Act of 1969.

Supplementary provisions as to probation.

190.—(1) Any court, on making a probation order, may, if it thinks that such a course is expedient for the purpose of the order, require the offender to give security for his good behaviour.

(2) Security may be given under the foregoing subsection by consignation with the clerk of the court or by entering into an undertaking to pay the amount, but not otherwise, and such security may be forfeited and recovered in like manner as caution.

Effects of probation and absolute discharge.

191.—(1) Subject as hereinafter provided, a conviction of an offence for which an order is made under this Part of this Act 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—

(*a*) any right of any such offender as aforesaid to appeal against his conviction; or

(*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 Criminal Justice (Scotland) Act 1949 and is expressed to extend to persons dealt with under section 1(1) of the Probation of Offenders Act 1907 as well as to convicted persons. 1949 c. 94. 1907 c. 17.

(4) Where a person charged with an offence has at any time previously been placed on probation or 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 probation order or order of absolute discharge in like manner as if the order were a conviction.

Probation reports.

192. Where a report by an officer of a local authority is made to any court (other than a court whose procedure is regulated by rules made under section 366(2) of this Act) 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:

Provided that if the offender is under 16 years of age and is not represented by counsel or a solicitor, a copy of the report need not be given to him but shall be given to his parent or guardian if present in court.

Penalties for statutory offences

Power to mitigate penalties.

193. 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

PART I

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:

(2) to substitute for imprisonment (either with or without caution for good behaviour, not exceeding an amount of £150 and a period of 12 months a fine as provided in the following table:—

Period of imprisonment ...	Amount of fine.
Not exceeding three months	Not exceeding £100.
Exceeding three months but not exceeding six months.	Not exceeding £200.
Exceeding six months but not exceeding one year ...	Not exceeding £400.
Over one year	Such fine as the court may, in its discretion, decide.

(3) to substitute the finding of caution not exceeding the amount of £150 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.

Fines

Time for payment.

194. The court may allow time for the payment of any fine, or for the finding of caution.

Payment by instalments.

195.—(1) Where a court imposes a fine on a person convicted, the court may, either at the same or at any subsequent time, order payment of the fine by instalments of such amounts, and

at such times, as it may think fit, and where any instalment is not paid at the time so ordered, that person shall be liable to imprisonment for such period as bears to the period specified in default of payment of the fine the same proportion, as nearly as may be, as the sum of the unpaid instalments bears to the total amount of the fine.

(2) Where in pursuance of subsection (1) of this section a person is imprisoned in default of payment of any instalment of a fine, and there is paid to the governor of the prison in which the said person is imprisoned a sum in part satisfaction of the sum of the unpaid instalments of the said fine, the term of imprisonment of the said person shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which he was sentenced as the sum so paid bears to the sum for which he is liable.

(3) Where a court has imposed a fine on a person convicted and has ordered payment of the fine by instalments in accordance with the terms of subsection (1) of this section, the court may at any time before imprisonment has followed on the sentence, without requiring the attendance of the accused, reduce the amount, or allow further time for the payment, of any instalment (whether the time for payment thereof has or has not expired), or order payment of the fine, so far as unpaid, by instalments of smaller amounts or at longer intervals than orginally ordered.

(4) The High Court may by Act of Adjournal regulate the procedure to be followed in cases arising under this section.

(5) Schedule 6 to this Act shall apply for the purposes of this section.

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

196. 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:

Provided that such sentence or decree, or an extract thereof, shall be first produced to and indorsed by the sheriff of such other district competent to have pronounced such sentence or decree in such other district.

Imprisonment in default of payment of fine.

197. Where the accused is found liable to a fine, the court may, whether or not the enactment under which the fine is imposed provides any method for its recovery, ordain the accused to be imprisoned in the event of failure to pay the fine,

PART I

either immediately or within such period as the court may fix; but such imprisonment shall not exceed the maximum period applicable to the fine under section 199 of this Act.

Substitution of custody for imprisonment where a child defaults on fine.

198. Where a child would, if he were an adult, be liable to be imprisoned in default of payment of any fine, damages, or expenses, the court may, if it considers that none of the other methods by which the case may legally be dealt with is suitable, order that the child be detained for such period, not exceeding one month, as may be specified in the order in a place chosen by the local authority in whose area the court is situated.

Period of imprisonment for non-payment of fine.

199. The maximum period of imprisonment that may be imposed in default of the payment of a fine imposed on conviction shall be as follows:—

Amount of Fine	*Period of Imprisonment*
Not exceeding £20	Three months.
Exceeding £20 but not exceeding £100	Four months.
Exceeding £100 but not exceeding £500	Six months.
Exceeding £500	Twelve months.

Discharge from imprisonment to be specified.

200. All warrants of imprisonment for payment of a fine, or for finding of caution, shall specify a period at the expiry of which the person sentenced shall be discharged, notwithstanding such fine shall not have been paid, or caution found.

Payment of fine in part by prisoner.
1952 c. 61.

201.—(1) Where a person committed to prison or otherwise detained for failure to pay a fine imposed by a court of solemn jurisdiction pays to the governor of the prison, under conditions prescribed by rules made under the Prisons (Scotland) Act 1952, any sum in part satisfaction of the fine, the term of imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which the prisoner is sentenced as the sum so paid bears to the total amount of the fine.

(2) In this section references to a prison and to the governor thereof shall include respectively references to any other place in which a person may be lawfully detained in default of payment of a fine, and to an officer in charge thereof.

Remission of fine where young offender detained.

202. Where, in the case of an offender detained in a Borstal institution, detention centre or any place under an order made by virtue of section 206 or 413 of this Act, or under supervision following release therefrom, who has not made payment of a

PART I

fine imposed before his being so detained, it appears to the Secretary of State that remission of the fine might assist the rehabilitation of the offender, he may, after consultation where practicable with the judge by whom or the presiding chairman of the court by which sentence was passed, remit that fine in whole or in part.

Fines payable to H.M. Exchequer.

203. 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 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.

Borstal training

Borstal training.

204.—(1) Where a person who is not less than 16 but under 21 years of age is convicted of an offence punishable with imprisonment, and the court is satisfied having regard to his character and previous conduct, and to the circumstances of the offence, that it is expedient for his reformation and the prevention of crime that he should undergo a period of training in a Borstal institution, the court may, subject to subsection (5) of this section, pass a sentence of Borstal training in lieu of any other sentence.

(2) Before a sentence of Borstal training is passed the court shall call for and consider a report on the offender's physical and mental condition and his suitability for such a sentence, which report it shall be the duty of the Secretary of State to cause to be furnished to the court.

(3) If on consideration of a report furnished in pursuance of subsection (2) of this section the court, either ex proprio motu or on the application of either party, thinks it expedient to do so, it may require any person concerned in the preparation of the report or with knowledge of matters dealt with in the report to appear with a view to his examination on oath regarding any of the matters dealt with in the report, and such person may be examined or cross-examined accordingly.

(4) A copy of any report furnished under subsection (2) of this section shall be given by the clerk of the court to the offender or his solicitor at least two clear days before the diet at which the sentence is to be passed.

(5) The power of a court to pass a sentence of Borstal training under subsection (1) of this section shall not be exercised in the case of any person on whom such a sentence has previously been imposed and who has served any part thereof.

PART I *Imprisonment, etc.*

Life imprisonment for murder.

205.—(1) No person shall suffer death for murder, and a person convicted of murder shall, subject to section 206(1) of this Act, be sentenced to imprisonment for life.

(2) On sentencing any person convicted of murder to imprisonment for life the High Court may at the same time declare the period which it recommends to the Secretary of State as the minimum period which in its view should elapse before the Secretary of State orders the release of that person on licence under section 61 of the Criminal Justice Act 1967.

1967 c. 80.

(3) For the purpose of any proceedings on or subsequent to a person's trial on a charge of capital murder, that charge and any plea or finding of guilty of capital murder shall be treated as being or having been a charge, or a plea or finding of guilty, of murder only; and if on 9th November 1965 a person was under sentence of death for murder, the sentence shall be treated as having been a sentence of imprisonment for life.

Punishment of person under 18.

206.—(1) A person convicted of murder who appears to the court to have been under the age of 18 years at the time the murder was committed shall not be sentenced to imprisonment for life; but in lieu thereof the court shall (notwithstanding anything in this or in any other Act) sentence him to be detained during Her Majesty's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the Secretary of State may direct.

(2) Where a child is convicted and the court is of opinion that none of the other methods of dealing with the child is suitable, the court may sentence him to be detained for such period as may be specified in the sentence; and where such a sentence has been passed, 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.

Restriction on imprisonment of person under 17.

207. No court shall impose imprisonment on a person under 17 years of age.

Restriction on detention of person under 21.

208.—(1) No court shall impose detention on a person under 21 years of age, unless the court is of opinion that no other method of dealing with him is appropriate.

(2) For the purpose of determining in pursuance of the provisions of subsection (1) of this section whether any other method of dealing with a person mentioned therein is appropriate, the

court shall obtain information about that person's circumstances from an officer of a local authority or otherwise and shall consider that information; and the court shall take into account any information before it which is relevant to his character and to his physical and mental condition.

(3) Where in the case of a person who is of or over 16 years of age but less than 21 years of age the court is of opinion as aforesaid, and either—

(*a*) if the person has been convicted of an offence punishable with imprisonment, is satisfied, having considered all the circumstances of the case, that neither a sentence of Borstal training nor a sentence of detention in a detention centre should be imposed; or

(*b*) would have power but for this section to impose imprisonment otherwise than by sentence;

it shall, subject to the provisions of this Act, instead of imposing a term of imprisonment upon him impose detention in a young offenders institution for a term not exceeding the term for which he could have been imprisoned.

(4) For the purposes of any reference in this section to a term of imprisonment or to a term of detention in a young offenders institution, consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.

Detention in detention centre.

209.—(1) Subject to the provisions of this section, in any case where a person who is not less than 16 but under 21 years of age is convicted of an offence punishable with imprisonment, and the court has been notified by the Secretary of State that a detention centre is available for the reception from that court of persons of his class or description, it may pass on him a sentence of detention in that centre for a fixed term of three months.

(2) A court shall not pass a sentence under this section in the case of a person who has served or is serving a sentence involving his detention for two months or more in a prison or in a young offenders institution or a sentence of Borstal training, or in the case of a person who has served a sentence of detention in a detention centre, unless the court is of the opinion that, having regard to special considerations arising out of the circumstances of the case and the character of the offender, this method of dealing with him is the most appropriate.

(3) Where it appears to the Secretary of State that a person detained in a detention centre is unfit for such detention by reason of his health, without prejudice to any other powers he may have in the matter, he may, after consultation where practicable with the judge by whom or the presiding chairman of

PART I

the court by which the sentence was passed, release that person; and he shall then be required to be under supervision in accordance with section 11(1) of the Criminal Justice (Scotland) Act 1963.

1963 c. 39.

Term of detention in a detention centre.

210.—(1) The term for which a person may be detained in a detention centre shall not exceed three months at a time; and accordingly no court may pronounce an order the effect of which would be that a person would be liable to be detained for more than that period.

(2) Where a court has before it a person convicted of an offence punishable with imprisonment who is serving a sentence of detention in a detention centre or who has been sentenced to and has not yet started to serve such a sentence as aforesaid, it may pass either of the following sentences (subject to the requirements of any enactment relating to those sentences)—

(*a*) a sentence of detention in a young offenders institution, or, if the person is of or over 21 years of age, a sentence of imprisonment, for a period not exceeding the aggregate of the unexpired portion of the sentence of detention in a detention centre and the maximum period of detention in a young offenders institution or of imprisonment, as the case may be, which the court may impose for the offence of which it has convicted the person; or

(*b*) a sentence of Borstal training;

and in that event the sentence of detention in a detention centre shall cease to have effect.

Recall to Borstal on re-conviction.

211.—(1) Where a person sentenced to Borstal training, being under supervision after his release from a Borstal institution, is convicted of an offence punishable with imprisonment, the court may, instead of dealing with him in any other manner, make an order for his recall.

(2) An order for the recall of a person made as aforesaid shall have the like effect as an order for recall made by the Secretary of State under section 33(4) of the Prisons (Scotland) Act 1952.

1952 c. 61.

Recall to young offenders institution on re-conviction.

212.—(1) Where a person sentenced to detention in a young offenders institution, being under supervision after his release from such an institution, is convicted of an offence punishable with imprisonment, the court may, instead of dealing with him in any other manner, make an order for his recall.

(2) An order for the recall of a person made as aforesaid shall have the like effect as an order for recall made by the Secretary

of State under section 12 of the Criminal Justice (Scotland) Act 1963. PART I 1963 c. 39.

Revocation of licence by court. 1967 c. 80.

213.—(1) If a person subject to a licence under section 60 or 61 of the Criminal Justice Act 1967 is convicted of an offence punishable on indictment with imprisonment, the court may, whether or not it passes any other sentence on him, revoke the licence.

(2) The power conferred on a court by this section to revoke the licence of any person released under section 60 of the Criminal Justice Act 1967 after being transferred to either part of Great Britain from another part of the United Kingdom, the Channel Islands or the Isle of Man shall be exercisable notwithstanding anything in section 26(6) of the Criminal Justice Act 1961 (exclusion of supervision of persons so transferred). 1961 c. 39.

Return to prison in case of breach of supervision.

214.—(1) If, on sworn information laid by or on behalf of the Secretary of State, it appears to the sheriff that a person, being under supervision under Schedule 1 to the Criminal Justice (Scotland) Act 1963, has failed to comply with any of the requirements imposed on him by his notice of supervision, the sheriff may issue a warrant for the arrest of that person or may, if he thinks fit, instead of issuing such a warrant in the first instance, issue a citation requiring the person to appear before him at such time as may be specified in the citation.

(2) If it is proved to the satisfaction of the sheriff before whom a person appears or is brought in pursuance of the last foregoing subsection that the person has failed to comply with any of the requirements of the notice of supervision, the sheriff shall, unless having regard to all the circumstances of the case, he considers it unnecessary or inexpedient to do so, order that he be sent back to prison for such term as may be specified in that order, not exceeding whichever is the shorter of the following, that is to say—

(*a*) a period of three months;

(*b*) a period equal to so much of the period of 12 months referred to in paragraph 1 of Schedule 1(1) to the Criminal Justice (Scotland) Act 1963 as was unexpired on the date on which proceedings were commenced.

(3) Subject to the following provisions of this section, Part II of this Act shall apply in relation to proceedings for an order as aforesaid as it applies in relation to proceedings in respect of a summary offence, and references in Part II of this Act to an offence, trial, conviction or sentence shall be construed accordingly.

PART I

(4) Proceedings for an order under subsection (2) of this section may be brought before a sheriff having jurisdiction in the area in which the supervising officer carries out his duties.

(5) A warrant issued for the purposes of proceedings for an order under subsection (2) above may, if the person laying the information so requests, bear an endorsement requiring any constable charged with its execution to communicate with the Secretary of State before arresting the person under supervision if the constable finds that that person is earning an honest livelihood or that there are other circumstances which ought to be brought to the notice of the Secretary of State.

1963 c. 39.

(6) Where a person while under supervision under Schedule 1 to the Criminal Justice (Scotland) Act 1963 is convicted of an offence for which the court has power to pass sentence of imprisonment, the court may, instead of dealing with him in any other manner, make such an order as could be made by a sheriff under subsection (2) of this section in proceedings for such an order.

(7) The Secretary of State may at any time release from prison a person who has been sent back to prison under subsection (2) or (6) of this section; and the provisions of this section and of the said Schedule shall apply to a person released by virtue of this subsection, subject to the following modifications:—

(*a*) that the period of twelve months referred to in paragraph 1 of the said Schedule shall be calculated from the date of his original release; and

(*b*) in relation to any further order for sending him back to prison under this section, the period referred to in subsection (2)(*a*) of this section shall be reduced by any time during which he has been detained by virtue of the previous order.

(8) In any proceedings, a certificate purporting to be signed by or on behalf of the Secretary of State and certifying—

(*a*) that a notice of supervision was given to any person in the terms specified in the certificate and on the date so specified; and

(*b*) either that no notice has been given to him under paragraph 3 of the said Schedule or that a notice has been so given in the terms specified in the certificate,

shall be sufficient evidence of the matters so certified; and the fact that a notice of supervision was given to any person shall be sufficient evidence that he was a person to whom section 14 of the Criminal Justice (Scotland) Act 1963 applies.

(9) For the purposes of Part III of the Criminal Justice Act 1961, a person who has been sent back to prison under subsection (2) or (6) of this section, and has not been released again, shall be deemed to be serving part of his original sentence, whether or not the term of that sentence has in fact expired. PART I 1961 c. 39.

215. Any person required or authorised by or under this Act to be taken to any place or to be kept in custody shall, while being so taken or kept, be deemed to be in legal custody. Legal custody.

Miscellaneous provisions as to conviction, sentence, etc.

216. A person may be convicted of, and punished for, a contravention of any statute or order, notwithstanding that he was guilty of such contravention as art and part only. Art and part guilt of statutory offence.

217.—(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. Form of sentence.

(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.

218. A court, in passing a sentence of imprisonment or detention in a young offenders institution as defined in section 31(1)(*d*) of the Prisons (Scotland) Act 1952 on a person for any offence, shall, 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. Consideration of time spent in custody. 1952 c. 61.

219. It shall be competent for a court to defer sentence after conviction for a period and on such conditions as the court may determine. Deferred sentence.

220. A capital sentence shall not be competent under this Act. Capital sentence not competent under this Act.

PART I

No penal servitude or hard labour.

221.—(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 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 two 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.

No fees exigible.

222. 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.

Forfeiture of property.

223.—(1) Where a person is convicted of an offence and the court which passes sentence is satisfied that any property which was in his possession or under his control at the time of his apprehension—

(*a*) has been used for the purpose of committing, or facilitating the commission of, any offence; or

(*b*) was intended by him to be used for that purpose,

that property shall be liable to forfeiture, and any property forfeited under this section shall be disposed of as the court may direct.

(2) 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.

Warrant of search for forfeited articles.

224. 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, PART I

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

Interlocutors to be signed by clerk.

225. In the High Court, interlocutors shall be distinctly minuted or entered in the record, and that entry shall be signed by the clerk.

Record copies to be inserted in books of adjournal of High Court.

226. The record copies of indictments brought before the High Court, and the record copies of all printed proceedings in the said court, shall be inserted in the books of adjournal, either at their proper place in the body of such books, or at the end of the volume wherein the relative procedure is recorded, in which case they shall be distinctly referred to as so appended; and the books of adjournal so made up and completed shall be and be taken to be and be used as the books of adjournal of the said court.

Indictment to be inserted in record book in sheriff court.

227. When an indictment in any sheriff court is either wholly or partly printed, a copy of it, either wholly or partly printed, shall be inserted in the record book of court, either in its proper place in the body thereof or at the end of the volume wherein the relative procedure is recorded, in which last case it shall be distinctly referred to as so appended.

APPEAL

Procedure prior to hearing

Right of appeal.

228. A person convicted may appeal under this Part of this Act to the High Court—

(*a*) against his conviction on any ground of appeal which involves a question of law alone;

(*b*) with the leave of the High Court or upon the certificate of the judge who presided at the trial that it is a fit case for appeal, against his conviction on any ground of appeal which involves a question of fact alone or a question of mixed law and fact or on any other ground which appears to the High Court or to the judge to be a sufficient ground of appeal;

(*c*) with the leave of the High Court, against the sentence passed on his conviction unless the sentence is one fixed by law:

Provided that a person sentenced to preventive detention within the meaning of section 21 of the Criminal Justice (Scotland) Act 1949 may appeal to the High Court against such sentence without such leave. 1949 c. 94.

PART I

Certificate by judge that case appealable. 1926 c. 15.

229.—(1) The certificate of the judge who presided at the trial that a case is a fit case for appeal shall be in the form set out in an Act of Adjournal under the Criminal Appeal (Scotland) Act 1926 or under this Act or as nearly as may be in such form.

(2) The trial judge may, in any case in which he considers it desirable to do so, inform the person convicted before him or sentenced by him that the case is, in his opinion, one fit for an appeal to the High Court under section 228(*b*) of this Act, and may give to such person a certificate to that effect.

Bill of suspension not competent.

230. It shall not be competent to appeal to the High Court by bill of suspension against any conviction, sentence, judgment or order pronounced in any proceedings on indictment in the sheriff court.

Time for appealing.

231. Where a person convicted desires to appeal under this Part of this Act to the High Court or to obtain the leave of the High Court to appeal, he shall within ten days of the date of his conviction in the case of appeal or application for leave to appeal against conviction, or within ten days of the date of his sentence in the case of appeal or application for leave to appeal against sentence, give notice of appeal or of application for leave to appeal. The time within which notice of appeal or of application for leave to appeal may be given may be extended at any time by the High Court.

Calculating days of appeal, etc.

232. In calculating the period of days in appeals and other applications under this Part of this Act, Sundays and public holidays shall not be included.

Forms for appeal.

233.—(1) A note of—

(*a*) appeal against conviction or sentence;

(*b*) application for leave to appeal against conviction or sentence; and

(*c*) application for extension of time within which, under this Part of this Act, a note of appeal or application for leave to appeal shall be given,

shall be wholly or partly written, typed, or printed, and shall be signed by the appellant or applicant or his counsel or agent and shall be in the form set out in an Act of Adjournal under the Criminal Appeal (Scotland) Act 1926 or under this Act or as nearly as may be in such form.

(2) Any such note shall, save as is hereinafter provided, be lodged with the Clerk of Justiciary within the prescribed period, and the appellant or applicant shall immediately after lodging

the said note send a copy of it to the Crown Agent and, where the conviction or sentence was in the sheriff court, to the appropriate sheriff clerk.

(3) Where, on the trial of a person entitled to appeal or make application for leave to appeal under this Part of this Act, a plea of insanity in bar of conviction has not been affirmed by the jury, any note required by this Part of this Act to be signed by the appellant or applicant himself may be signed by his counsel or agent, or other person authorised to act on his behalf, and may be lodged with the Clerk of Justiciary by such agent or other person authorised as aforesaid.

(4) On an appeal being lodged and on an application for leave to appeal being granted, the Clerk of Justiciary shall give notice to the Prison Commissioners for Scotland.

(5) Where the High Court has, on a note of application for leave to appeal, given an applicant leave to appeal, it shall not be necessary for such applicant to lodge any note of appeal, but the note of application for leave to appeal shall in such case be deemed to be a note of appeal.

Presentation of appeal in writing.

234.—(1) If an appellant or an applicant for leave to appeal desires to present his case and his argument in writing instead of orally he shall intimate this desire to the Clerk of Justiciary at least four days before the diet fixed for the hearing of the appeal or application for leave to appeal, and, at the same time, shall lodge with the Clerk of Justiciary three copies of his case and argument; at the same time, he shall also send a copy thereof to the Crown Agent. Any case or argument so presented shall be considered by the High Court.

(2) Unless the High Court shall otherwise direct, the respondent, in a case to which this section applies, shall not make a written reply to the case and argument in writing, but shall reply orally thereto at the diet fixed for the hearing of the appeal or application for leave to appeal.

(3) Unless the High Court shall otherwise allow, an appellant or an applicant for leave to appeal who has presented his case and argument in writing shall not be entitled to submit in addition an oral argument to the court in support of the appeal or application for leave to appeal.

Applications may be made orally or in writing.

235. Except where otherwise provided in this Part of this Act, any application to the High Court may be made by the appellant or respondent as the case may be or by counsel on his behalf, orally or in writing, but in regard to such applications if the appellant is unrepresented and is in custody and is not entitled or has not obtained leave to be present before the court,

PART I

he shall make any such application by forwarding the same in writing to the Clerk of Justiciary who shall take the proper steps to obtain the decision of the court thereon.

Proceedings in sheriff court to be furnished.

236. In the case of an appeal or application for leave to appeal against a conviction or sentence in a sheriff court, the sheriff clerk shall furnish to the Clerk of Justiciary a certified copy of the proceedings at the trial, or shall forward to him the original record of the proceedings, as may be required by the Clerk of Justiciary.

Judge's notes and report to be furnished.

237.—(1) Where a person convicted appeals or applies for leave to appeal under this Part of this Act against the conviction or sentence, the judge who presided at the trial shall furnish to the Clerk of Justiciary in the manner provided in this section, his notes of the proceedings before him, and a report giving his opinion on the case or on any point arising therein.

(2) The Clerk of Justiciary when he has received such a note as is referred to in section 233(1) of this Act or when the Secretary of State shall exercise his powers under section 263(1) of this Act, shall request the judge who presided at the trial to furnish him with a copy of his notes of the proceedings at the trial, certified by him, and the judge shall comply with such request. The High Court or any judge thereof, if they or he sees fit, may order the said notes to be printed or typed for the use of the court and the parties.

(3) When the Clerk of Justiciary has received such a note as is referred to in section 233(1) of this Act or when the Secretary of State shall exercise his powers under section 263(1) of this Act, he shall request the judge who presided at the trial to furnish him with a report in writing, giving his opinion upon the case generally, or upon any point arising upon the case of the appellant or applicant, and the judge shall comply with such request. When making a request for such report the Clerk of Justiciary shall send to the judge a copy of the note he has received or any other document or information which he shall consider material or which the High Court at any time shall direct him to send or with which such judge may request to be furnished, to enable such judge to deal in his report with the appellant's or applicant's case generally or with any point arising thereon.

(4) The report of the judge shall be made to the High Court, and, except by leave of the High Court or a judge thereof, the Clerk of Justiciary shall not furnish to any person any part thereof.

PART I

Admission of appellant to bail.

238.—(1) The High Court may, if it seems fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.

(2) An appellant who is admitted to bail shall, unless the High Court otherwise directs, appear personally in court on the day or days fixed for the hearing of his appeal or application for leave to appeal. In the event of the appellant failing so to appear, the court may decline to consider the appeal or application, and may dismiss it summarily or may consider and determine it or make such other order as it thinks fit.

Clerk to give notice of date of hearing.

239.—(1) When the High Court fixes the date for the hearing of an appeal, or of an application for leave to appeal or for extension of time for lodging notes of appeal or of application for leave to appeal which it is proposed to dispose of by the court, the Clerk of Justiciary shall give notice to the Crown Agent and to the solicitor of the appellant or applicant, or to the appellant or applicant himself if he has no known solicitor, and the latter shall thereupon lodge three copies (typed or printed) of the said appeal or application for the use of the court.

(2) Where it is proposed that the powers of the court shall be exercised by a single judge under the provisions of section 247 of this Act, one copy only of the application to be disposed of shall be lodged by the solicitor of the applicant for the use of the judge.

Appellant may be present at hearing.

240. An appellant, notwithstanding that he is in custody, shall be entitled to be present if he desires it, on the hearing of his appeal, except where the appeal is on some ground involving a question of law alone, but, in that case and on an application for leave to appeal and on any proceedings preliminary or incidental to an appeal, shall not be entitled to be present, except where it is provided by Act of Adjournal that he shall have the right to be present, or where the High Court gives him leave to be present.

Notice to authorities, etc., of date of hearing.

241. Where an appellant or applicant is in custody and has obtained leave or is entitled to be present at the hearing of his appeal or application, the Clerk of Justiciary shall notify the appellant or applicant, the Governor of the prison in which the appellant or applicant then is, and the Prison Commissioners for Scotland of the probable day on which the appeal or application will be heard. The Prison Commissioners for Scotland shall take steps to transfer the appellant or applicant to a prison convenient for his appearance before the High Court, at such reasonable time before the hearing as shall enable him to consult his legal adviser, if any.

PART I

Notice to Prison Commissioners of attendance of appellant at hearing.

242. When an appellant or applicant is entitled, or has been granted leave to be present at any diet—

(*a*) before the High Court or any judge thereof, or

(*b*) for the taking of additional evidence before a person appointed for the purpose under section 252(*b*) of this Act, or

(*c*) for an examination or investigation by a special commissioner in terms of section 252(*d*) of this Act,

the Clerk of Justiciary shall give timeous notice to the Prison Commissioners for Scotland, in the form set out in an Act of Adjournal under the Criminal Appeal (Scotland) Act 1926 or under this Act or as nearly as may be in such form, which notice shall be sufficient warrant to the said Commissioners for transmitting the appellant or applicant in custody from prison to the place where said diet or any subsequent diets are to be held and for reconveying him to prison at the conclusion of the said diet and any subsequent diets. The appellant or applicant shall appear at all such diets in ordinary civilian clothes.

1926 c. 15.

Warders to attend court.

243. The Prison Commissioners for Scotland shall, on notice under the last foregoing section from the Clerk of Justiciary, cause from time to time such sufficient number of male and female warders to attend the sittings of the court as, having regard to the list of appeals thereat, they shall consider necessary.

Abandonment of appeal.

244. An appellant or applicant, at any time after he has lodged such a note as is referred to in section 233(1) of this Act, may abandon his appeal or application by lodging with the Clerk of Justiciary notice of abandonment thereof, which shall be in the form set out in an Act of Adjournal under the Criminal Appeal (Scotland) Act 1926 or under this Act or as nearly as may be in such form, and on such notice being lodged the appeal or application shall be deemed to have been dismissed by the court.

Procedure at hearing

Quorum and sitting of High Court.

245.—(1) For the purpose of hearing and determining any appeal or other proceeding under this Part of this Act three of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and the determination of any question under this Part of this Act by the court shall be according to the votes of the majority of the members of the court sitting, including the presiding judge, and each judge so sitting shall be entitled to pronounce a separate opinion.

(2) The High Court shall hold both during session and during vacation such sittings for the disposal of appeals and other proceedings under this Part of this Act as may be necessary.

(3) The provisions of this section shall apply to cases certified to the High Court by a single judge of the said court and to appeals by way of advocation from the sheriff court in like manner as they apply to appeals under this Part of this Act.

Sittings to be arranged by Lord Justice General.

246. Sittings of the High Court (including sittings in Court of Session vacation and sittings of a judge of the court under section 247 of this Act) shall be arranged to be held as may from time to time be directed by the Lord Justice General, whom failing by the Lord Justice Clerk.

Powers which may be exercised by a single judge.

247. The powers of the High Court under this Part of this Act to give leave to appeal, to extend the time within which notice of appeal or of an application for leave to appeal may be given, to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave, and to admit an appellant to bail, may be exercised by any judge of the High Court in the same manner as they may be exercised by the High Court, and subject to the same provisions; but, if the judge refuses an application on the part of the appellant to exercise any such power in his favour, the appellant shall be entitled to have the application determined by the High Court.

Single judge may act wherever convenient.

248. A judge of the High Court sitting under the provisions of section 247 of this Act may sit and act wherever convenient.

Interlocutory proceedings.

249. Subject to the provisions of section 247 of this Act and without prejudice thereto, preliminary and interlocutory proceedings incidental to any appeal or application may be disposed of by a single judge.

Representation before single judge.

250. In all proceedings before a judge under section 247 of this Act, and in all preliminary and interlocutory proceedings and applications except such as are heard before the full court, the parties thereto may be represented and appear by a solicitor alone.

Appeal against refusal of application.

251.—(1) When an application or applications have been dealt with by a judge of the High Court, under section 247 of this Act, the Clerk of Justiciary shall notify to the applicant the decision in the form set out in an Act of Adjournal under the Criminal Appeal (Scotland) Act 1926 or under this Act or as nearly as may be in such form.

1926 c. 15.

PART I

(2) In the event of such judge refusing all or any of such applications, the Clerk of Justiciary on notifying such refusal to the applicant shall forward to him the prescribed form to fill up and forthwith return if he desires to have his said application or applications determined by the High Court as fully constituted for the hearing of appeals under this Part of this Act. If the applicant does not so desire, or does not return within five days to the Clerk the form duly filled up by him, the refusal of his application or applications by such judge shall be final.

(3) If the applicant desires a determination by the High Court as aforesaid and is not legally represented, he may be present at the hearing and determination by the High Court of his said application:

Provided that an applicant who is legally represented shall not be entitled to be present without leave of the court.

(4) When an applicant duly fills up and returns to the Clerk of Justiciary within the prescribed time the said form expressing a desire to be present at the hearing and determination by the court of the applications mentioned in this section, the said form shall be deemed to be an application by the applicant for leave to be so present, and the Clerk of Justiciary, on receiving the said form, shall take the necessary steps for placing the said application before the court.

(5) If the said application to be present is refused by the court, the Clerk of Justiciary shall notify the applicant; and if the said application is granted, he shall notify the applicant and the Governor of the prison wherein the applicant is in custody and the Prison Commissioners for Scotland.

(6) For the purpose of constituting a Court of Appeal, the judge who has refused any such application may sit as a member of such court, and take part in determining such application.

Supplemental powers of High Court.

252. For the purposes of this Part of this Act the High Court may, if they think it necessary or expedient in the interest of justice—

(*a*) order the production of any document, or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case;

(*b*) if they think fit, order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the High Court, whether they were or were not called at the trial, or order the examina-

tion of any such witnesses to be conducted in manner provided by section 253(1) of this Act before any judge of the High Court or other person appointed by the High Court for the purpose, and allow the admission of any depositions so taken as evidence before the High Court;

(*c*) if they think fit, receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness, and, if the appellant makes an application for the purpose, of the husband or wife of the appellant, in cases where the evidence of the husband or wife could not have been given at the trial except on such an application;

(*d*) where any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the High Court conveniently be conducted before the court, order the reference of the question in manner provided by section 253(2) of this Act for inquiry and report to a special commissioner appointed by the court, and act upon the report of any such commissioner so far as they think fit to adopt it;

(*e*) appoint any person with special expert knowledge to act as assessor to the High Court in any case where it appears to the court that such special knowledge is required for the proper determination of the case;

and exercise in relation to the proceedings under this Part of this Act any other powers vested in the High Court, and issue any warrants necessary for enforcing the orders or sentences of the High Court:

Provided that in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial.

Evidence in court or on commission.

253.—(1) The evidence of any witnesses ordered to be examined before the High Court or before any judge of the High Court or other person appointed by the High Court shall be taken in accordance with the existing law and practice as to the taking of evidence in criminal trials in Scotland. The appellant or applicant and the respondent or counsel on their behalf shall be entitled to be present at and take part in any examination of any witness to which this section relates.

(2) When an order of reference is made by the High Court under section 252(*d*) of this Act, the question to be referred and the person to whom as special commissioner the same shall

PART I

be referred shall be specified in such order. The court may in such order, or by giving directions as and when they from time to time shall think right, specify whether the appellant or respondent or any person on their behalf may be present at any examination or investigation or at any stage thereof as may be ordered under the said section 252(*d*), and specify any and what powers of the court may be delegated to such special commissioner, and may require him from time to time to make interim reports to the court upon the question referred to him, and may, if the appellant is in custody, give leave to him to be present at any stage of such examination or investigation, and may give directions to the Clerk of Justiciary that any report made by such special commissioner shall be made available to the appellant and respondent or to counsel or agent on their behalf, and that they shall be entitled to have copies thereof made if they so desire.

Determination of appeals.

254.—(1) The High Court on an appeal against conviction shall allow the appeal if they think—

(*a*) that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or

(*b*) that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law, or

(*c*) that on any ground there was a miscarriage of justice,

and in any other case shall dismiss the appeal:

Provided that the court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred.

(2) Subject to the special provisions of this Part of this Act the High Court shall, if they allow an appeal against conviction, quash the conviction.

(3) On any appeal against conviction the High Court shall have the like power to quash the sentence passed and to pass another sentence as is conferred on the High Court by subsection (4) of this section in the case of an appeal against sentence.

(4) On any appeal against sentence the High Court shall, if they think that a different sentence should have been passed, quash the sentence passed and pass such other sentence warranted in law (whether more or less severe) in substitution therefor as they think ought to have been passed, and in any other case shall dismiss the appeal.

PART I

Substitution of verdict.

255.—(1) If it appears to the High Court that an appellant, though not properly convicted on some charge or part of the indictment, has been properly convicted on some other charge or part of the indictment, the High Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty on such other charge or part of the indictment, and may either affirm the sentence passed on the appellant at the trial or pass such sentence in substitution therefor as they think proper, and as may be warranted in law by the verdict so substituted.

(2) Where an appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the High Court that the jury must have been satisfied of facts which proved him guilty of that other offence, the court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence.

(3) If on any appeal it appears to the High Court that the appellant committed the act charged against him but that he was insane at the time of committing the same, the court may substitute for the verdict found by the jury a verdict of acquittal on the ground of insanity, and may quash the sentence passed at the trial and make such order for the detention of the appellant as may be made under section 174 of this Act in the case of a person acquitted by a jury on the ground of insanity.

(4) An order for the detention of a person in a hospital under this section shall have the like effect as a hospital order together with an order restricting his discharge, made without limitation of time; and where such an order is given in respect of a person while he is in hospital, he shall be deemed to be admitted in pursuance of, and on the date of, the order.

Frivolous appeals.

256. If on any notice of appeal against a conviction purporting to be on a ground of appeal which involves a question of law alone it appears to the High Court that the appeal is frivolous or vexatious, and that it can be determined without adjourning it for a full hearing, they may dismiss the appeal summarily, without calling on any persons to attend the hearing or to appear for the Crown thereon.

Failure to appear at hearing.

257. Where no appearance is made by or on behalf of an appellant or applicant at the diet appointed for the hearing of an appeal or application for leave to appeal and where no case or argument in writing has been timeously lodged, the High Court shall dispose of the appeal or application for leave to appeal as if it had been abandoned.

PART I

Appellant may be sentenced in absence.

258. The power of the High Court to pass any sentence under this Part of this Act may be exercised notwithstanding that the appellant is for any reason not present.

Continuation of hearing.

259. The High Court or any single judge exercising the powers of the High Court under section 247 of this Act may continue the hearing of any appeal or application to a date, fixed or not fixed, and any judge of the High Court, or other person appointed by the court to take additional evidence, may fix any diet of proof necessary for that purpose.

Notice of decision of court on application.

260. When the High Court has heard and dealt with any application under this Part of this Act, the Clerk of Justiciary shall (unless it appears to him unnecessary so to do) give to the applicant (if he is in custody and has not been present at the hearing of such application) notice of the decision of the court in relation to the said application.

Notice of determination of appeal.

261. On the final determination of any appeal under this Part of this Act or of any matter under section 247 of this Act, the Clerk of Justiciary shall give notice of such determination to the appellant or applicant if he is in custody and has not been present at such final determination, to the clerk of the court in which the conviction took place, and to the Prison Commissioners for Scotland.

Finality of proceedings.

262. Subject to the provisions of the next following section of this Act, all interlocutors and sentences pronounced by the High Court under this Part of this Act shall be final and conclusive and not subject to review by any court whatsoever and it shall be incompetent to stay or suspend any execution or diligence issuing from the High Court under this Part of this Act.

Further provisions as to appeals

Prerogative of mercy.

263.—(1) Nothing in this Part of this Act shall affect the prerogative of mercy, but the Secretary of State on the consideration of any conviction of a person or the sentence (other than sentence of death) passed on a person who has been convicted, may, if he thinks fit, at any time, and whether or not an appeal or an application for leave to appeal against such conviction or sentence has previously been heard and determined by the High Court, either—

(*a*) refer the whole case to the High Court and the case shall then be heard and determined by the High Court as in the case of an appeal under this Part of this Act; or

(*b*) if he desires the assistance of the High Court on any point arising in the case refer that point to the court for their opinion thereon, and the court shall consider the point so referred and furnish the Secretary of State with their opinion thereon accordingly.

(2) The power of the Secretary of State under this section to refer to the High Court the case, or any point arising on the case, of a person convicted shall be exercisable whether or not that person has petitioned for the exercise of Her Majesty's mercy.

Disqualification, forfeiture, etc.

264.—(1) Where, upon conviction of any person, any disqualification, forfeiture or disability attaches to such person by reason of such conviction, such disqualification, forfeiture or disability shall not attach for the period of ten days from the date of the verdict against such person nor, in the event of a note of appeal or of application for leave to appeal being lodged under this Part of this Act, until the determination thereof.

(2) Where, upon a conviction, any property, matters or things which are the subject of the prosecution or connected therewith are to be or may be ordered to be destroyed or forfeited, the destruction or forfeiture or the operation of any order for destruction or forfeiture thereof shall be suspended for the period of ten days after the date of the verdict in the trial, and, in the event of a note of appeal or of application for leave to appeal being lodged under this Part of this Act, shall be further suspended until the determination thereof.

Fines and caution.

265.—(1) Where a person has on conviction been sentenced to payment of a fine and in default of payment to imprisonment, the person lawfully authorised to receive such fine shall, on receiving the same, retain it until the determination of any appeal in relation thereto.

(2) If a person sentenced to payment of a fine remains in custody in default of payment of the fine he shall be deemed, for the purposes of this Part of this Act, to be a person sentenced to imprisonment.

(3) Where a person has on conviction been sentenced to payment of a fine and in default of such payment to imprisonment, and he intimates to the judge who presided at the trial that he is desirous of appealing against his conviction to the High Court, either upon grounds of law alone, or with the certificate of the said judge upon any grounds mentioned in section 228(*b*) of this Act, the judge may, by order entered on the record, appoint such person forthwith to find caution for

PART I

such sum as the judge may think right, to prosecute his appeal; and, subject thereto, may also so order that payment of the said fine shall be made at the final determination of the appeal, if the same be dismissed, to the clerk of the court in which the conviction took place or otherwise as the High Court may then order.

(4) An appellant who has been sentenced to the payment of a fine, and has paid the same in accordance with such sentence, shall, in the event of his appeal being successful, be entitled, subject to any order of the High Court, to the return of the sum or any part thereof so paid by him.

(5) If an appellant to whom subsection (3) of this section applies does not pay the fine or lodge a note of appeal upon grounds of law alone, or with the certificate of the judge who presided at the trial upon any grounds mentioned in section 228(*b*) of this Act, within ten days from the date of his conviction and sentence, the Clerk of Justiciary shall report such omission to the High Court or any judge thereof who, after such notice as they or he may deem advisable, may find that the aforesaid caution has been forfeited, and may pronounce against the cautioner decree for such sum as they or he may think proper and may issue a warrant for the apprehension of the appellant and may commit him to prison in default of payment of his fine, or may make such other order as they or he may think right.

Expenses.

266. On the hearing and determination of an appeal or any proceedings preliminary or incidental thereto under this Part of this Act no expenses shall be allowed on either side.

No fees exigible.

267. Save in so far as provided in this Part of this Act, no court fees, or other fees or expenses shall be exigible from or awarded against an appellant or applicant in respect of an appeal or application under any of the provisions contained in sections 228 to 279 of this Act.

Reckoning of time spent pending appeal.

268.—(1) The time during which an appellant, after admission to bail under section 238 of this Act, is at large pending the determination of his appeal shall not be reckoned as part of any term of imprisonment under his sentence.

(2) The time during which an appellant is in custody pending the determination of his appeal shall, subject to any direction which the High Court may give to the contrary, be reckoned as part of any term of imprisonment under his sentence.

(3) Imprisonment of an appellant shall, subject to any direction which the High Court may give to the contrary, be deemed to run, if the appellant is in custody, as from the date on which the sentence was passed, and to begin to run or to be resumed, if

the appellant is not in custody, as from the date on which he is received into prison under the sentence.

(4) In this section references to a prison and imprisonment shall include respectively references to a Borstal institution, detention centre or place of safety and to detention in such institution, centre or place of safety, and any reference to a sentence shall be construed as a reference to a sentence passed by the court imposing sentence or by the High Court on appeal as the case may require.

Extract convictions.

269. No extract conviction shall be issued during the period of ten days after the actual day on which such conviction took place, save in so far as the same may be required as a warrant for the detention of the person convicted under any sentence which shall have been pronounced against him nor, in the event of a note of appeal or of application for leave to appeal being lodged under this Part of this Act, until the determination thereof.

Custody of trial documents, etc.

270.—(1) Any document, production or other thing lodged in connection with the proceedings on the trial of any person who, if convicted, is entitled or may be authorised to appeal under this Part of this Act, shall, in accordance with the provisions of this section, be kept in the custody of the court in which the conviction took place.

(2) All documents and other productions produced at the trial of a person convicted shall be kept for the period of ten days after the actual day on which the conviction took place in the custody of the court of trial in such manner as it may direct, and, failing direction, such custody shall be in the hands of the sheriff clerk of the district of the court of the second diet to whom the clerk of court shall hand them over at the close of the trial, unless otherwise ordered by the High Court on a note of appeal or application for leave to appeal being lodged, and if within such period of ten days or any extension thereof authorised by the High Court a note of appeal or of application for leave to appeal has been lodged under this Part of this Act, they shall be so kept until the determination thereof:

Provided that the judge of the court in which the conviction took place may, on cause shown, grant an order authorising any of such documents or productions to be released on such conditions as to custody and return as he may deem it proper to prescribe.

(3) All such documents or other productions so retained in custody or released and returned shall, under supervision of the custodian thereof, be made available for inspection and for the

PART I

purpose of making copies of documents or productions to an appellant or applicant who has lodged a note of appeal or of application for leave to appeal or to his counsel or agent, and to the Crown Agent and the procurator-fiscal or his deputes.

(4) In case no note of appeal or application for leave to appeal is lodged within such period of ten days or extension thereof as aforesaid, all such documents and productions shall be dealt with as they are in use to be dealt with according to the existing law and practice at the conclusion of a trial.

Clerk of Justiciary to furnish forms, etc.

271. The Clerk of Justiciary shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application under this Part of this Act to any person who demands the same, and to officers of courts, governors of prisons, and such other officers or persons as he thinks fit, and the governor of a prison shall cause those forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under this Part of this Act, and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the Clerk of Justiciary.

Note to be kept of appeal.

272. The Clerk of Justiciary shall in all cases of appeal or of application for leave to appeal from a conviction obtained or sentence pronounced in the High Court, note on the margin of the record of the trial the fact of an appeal or application for leave to appeal having been taken and the result of the appeal or application for leave to appeal, and, in the case of an appeal or application for leave to appeal taken against any conviction obtained or sentence pronounced in the sheriff court, the Clerk of Justiciary shall notify the appropriate sheriff clerk of the result of the said appeal or application, and it shall be the duty of the sheriff clerk to enter on the margin of the record of the trial a note of such result.

Register of appeals.

273.—(1) The Clerk of Justiciary shall keep a register, in such form as he thinks fit, of all cases in which he shall receive a note of appeal or note of application for leave to appeal under this Part of this Act, which register shall be open for public inspection at such place and at such hours as the Clerk of Justiciary, subject to the approval of the High Court, shall consider convenient.

(2) The Clerk of Justiciary shall also take the necessary steps for preparing, from time to time, a list of cases to be dealt with by the High Court, and shall cause such list to be published in such manner as, subject to the approval of the High Court,

he shall think convenient for giving due notice to any parties interested, of the hearing of such cases by the High Court.

Shorthand notes of trial.

274.—(1) Shorthand notes shall be taken of the proceedings at the trial of any person who, if convicted, is entitled or may be authorised to appeal under this Part of this Act, and on any appeal or application for leave to appeal a transcript of the notes or any part thereof shall be made if the Clerk of Justiciary so directs, and furnished to him for the use of the High Court or any judge thereof:

Provided that a transcript shall be furnished to any party interested upon the payment of such charges as the Treasury may fix.

(2) The Secretary of State may also, if he thinks fit in any case, direct a transcript of the shorthand notes to be made and furnished to him.

(3) The cost of taking any such shorthand notes, and of any transcript where a transcript is directed to be made by the Clerk of the Justiciary or by the Secretary of State, shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of moneys provided by Parliament.

(4) In this section, the expression " proceedings at the trial " shall mean the whole proceedings, including discussions (*a*) on any objection to the relevancy of the indictment; (*b*) in reference to any challenge of jurors; and (*c*) on all questions arising in the course of the trial—with the decisions of the court thereon—the evidence led at the trial, any statement made by or on behalf of the prisoner, whether before or after verdict, the summing up by the judge, the speeches of counsel or agent, the verdict of the jury and sentence by the judge.

Certification of shorthand notes, etc.

275.—(1) The shorthand writer shall sign the shorthand notes taken by him of any trial or proceeding and certify the same to be complete and correct shorthand notes thereof and shall retain the same unless and until he is directed by the Clerk of Justiciary to forward a transcript of such shorthand notes to him.

(2) The shorthand writer shall, on being directed by the Clerk of Justiciary, furnish to him for the use of the High Court a transcript of the whole or of any part of the shorthand notes taken by him of any trial or proceeding in reference to which an appellant has appealed under this Part of this Act.

(3) The shorthand writer shall also furnish to a party interested in a trial or other proceeding in relation to which a

PART I

person may appeal under this Part of this Act, and to no other person, a transcript of the whole or of any part of the shorthand notes of any such trial or other proceeding on payment by such party interested to such shorthand writer of his charges on such scale as the Treasury may fix.

(4) A party interested in an appeal under this Part of this Act may obtain from the Clerk of Justiciary a copy of any documentary production lodged by or for any other party to the appeal, upon payment therefor of the charges thereof on the scale referred to in the preceding subsection.

(5) For the purposes of this and the last foregoing section, "a party interested" shall mean the prosecutor or the person convicted or any other person named in, or immediately affected by, any order made by the judge of the court in which the conviction took place, or other person authorised to act on behalf of a party interested, as herein defined.

(6) Whenever a transcript of the whole or, of any part of such shorthand notes is required for the use of the High Court, such transcript may be made by the shorthand writer who took and certified the shorthand notes or by such other competent person as the Clerk of Justiciary may direct.

(7) A transcript of the whole or any part of the shorthand notes relating to the case of any appellant which may be required for the use of the High Court shall be typewritten and certified by the person making the same to be a correct and complete transcript of the whole or of such part, as the case may be, of the shorthand notes purporting to have been taken, signed and certified by the shorthand writer who took the same.

Declaration administered to shorthand writer.

276. The entry in the minute book of the court of trial shall be signed by the clerk of court and shall be in the following terms, viz.:—

> "The court directed that the whole proceedings in this case (or) in all the cases set down for trial at this sitting be taken down in shorthand and appointed shorthand writer, (address), to do so, and the declaration de fideli administratione officii was administered to him."

Non-compliance with certain provisions may be waived.

277.—(1) Non-compliance with the provisions of this Act set out in subsection (2) of this section, or with any rule of practice for the time being in force under this Part of this Act (other than section 280 of this Act) relating to appeals and applications for leave to appeal, shall not prevent the further prosecution of an appeal or application if the High Court or a judge thereof

consider it just and proper that such non-compliance be waived or remedied by amendment or otherwise. The High Court or a judge thereof may, in such manner as they or he think fit, direct the remedy of such non-compliance, and upon the same being remedied accordingly the appeal or application shall proceed.

(2) The provisions of this Act referred to in subsection (1) of this section are:—

section 229	section 250
section 232	section 251
section 233	section 253
section 234	section 257
section 235	section 259
section 236	section 260
section 237	section 261
section 239	section 264
section 241	section 265
section 242	section 267
section 243	section 269
section 244	section 270
section 246	section 272
section 248	section 273
section 249	section 275.

Forms of procedure may be varied. 1926 c. 15.

278. The Clerk of Justiciary may, with the sanction of the Lord Justice General and the Lord Justice Clerk, vary the forms set out in an Act of Adjournal under the Criminal Appeal (Scotland) Act 1926 or under this Act from time to time as may be found necessary for giving effect to the provisions of this Part of this Act.

Interpretation of sections 228 to 278 of this Act.

279. In sections 228 to 278 of this Act, unless the context otherwise requires—

"appellant" includes a person who has been convicted and desires to appeal under this Part of this Act;

"sentence" includes any order of the High Court made on conviction with reference to the person convicted or his wife or children, and any recommendation of the High Court as to the making of a deportation order in the case of a person convicted and the power of the High Court to pass a sentence includes a power to make any such order of the court or recommendation, and a recommendation so made by the High Court shall have the same effect for the purposes of Articles 20 and 21 of the Aliens Order 1953 as the certificate and recommendation of the convicting court.

PART I

Appeals against hospital orders, etc.

280. Where a hospital order, guardianship order or an order restricting discharge has been made by a court in respect of a person charged or brought before it, he may, without prejudice to any other form of appeal under any rule of law, appeal against that order in the same manner as against a conviction.

Miscellaneous

High Court proceedings final.

281. All interlocutors and sentences pronounced by the High Court under the authority of this Part of this Act shall be final and conclusive, and not subject to review by any court whatsoever, and it shall be incompetent to stay or suspend any execution or diligence issuing forth of the High Court under the authority of the same.

Acts of Adjournal.

282. The High Court may by Act of Adjournal regulate the practice and procedure in relation to solemn criminal procedure under any enactment, including this Part of this Act, and make such rules and regulations as may be necessary to carry out the purposes and accomplish the objects of any enactment relating to solemn criminal procedure, including this Part of this Act, provided that no rule, regulation or provision which affects the governor or any other officer of a prison shall be made by any such Act of Adjournal except with the consent of the Secretary of State.

PART II

SUMMARY PROCEDURE

Jurisdiction

Application of Part II of this Act.

283.—(1) This Part of this Act shall apply to summary proceedings in respect of—

(*a*) any offence which might prior to the passing of this Act, or which may under the provisions of this or any Act, whether passed before or after the passing of this Act, be tried in a summary manner;

(*b*) any offence or the recovery of a penalty under any statute which does not exclude summary procedure;

(*c*) any order *ad factum praestandum*, or other order of court or warrant competent to a court of summary jurisdiction;

and shall apply to procedure in all courts of summary jurisdiction in so far as they have jurisdiction in the matters aforesaid.

PART II

(2) Where any statute provides for summary proceedings or appeal therefrom being taken under any public general or local enactment, such proceedings or appeal shall be taken under this Part of this Act.

(3) Nothing in this Part of this Act shall extend to any information or complaint or other proceeding under or by virtue of any statutory provision for the recovery of any rate, tax, or impost whatsoever, or shall affect any right to sue for a penalty, or to apply for an order of court or other warrant *ad factum praestandum* in the Court of Session or sheriff court, but it shall not be competent to sue for penalties in the small debt court.

Jurisdiction of inferior courts.

284. The jurisdiction and powers of all courts of summary jurisdiction, except in so far as the same may be altered or modified by any future Act shall remain as at the commencement of this Act and the district court shall, without prejudice to any other or wider powers conferred by statute, be entitled to exercise power on convicting of a common law offence—

(*a*) to award imprisonment for any period not exceeding 60 days;

(*b*) to impose a fine not exceeding £100;

(*c*) to ordain the accused (in lieu of or an addition to such imprisonment or fine) to find caution for good behaviour for any period not exceeding six months and to an amount not exceeding £100;

(*d*) failing payment of such fine or on failure to find such caution, to award imprisonment in accordance with section 407 of this Act:

Provided that in no case shall the total imprisonment exceed 60 days.

Certain crimes not to be tried in inferior courts.

285. A court of summary jurisdiction other than the sheriff court shall not have jurisdiction to try or to pronounce sentence in, but shall, to the extent and in the manner mentioned in the next following section, be entitled to take cognizance of the case of any person—

(*a*) found within the jurisdiction of such court, and brought before it accused or suspected of having committed at any place beyond the jurisdiction of such court any offence, or

(*b*) brought before such court accused or suspected of having committed within the jurisdiction thereof any of the following offences:—

(i) murder, culpable homicide, robbery, rape, wilful fire-raising, or attempt at wilful fire-raising:

PART II

(ii) stouthrief, theft by housebreaking, or housebreaking with intent to steal:

(iii) theft or reset of theft, falsehood fraud or wilful imposition, breach of trust or embezzlement, all to an amount exceeding £25:

(iv) any of the offences specified in the last foregoing head, or any attempt thereat, where the accused is known to have been previously convicted of any offence inferring dishonest appropriation of property:

(v) assault whereby any limb has been fractured, or assault with intent to ravish, or assault to the danger of life, or assault by stabbing:

(vi) uttering forged documents or uttering forged bank or banker's notes, or offences under the Acts relating to coinage:

Provided that a person who has been dismissed with an admonition or in whose case a probation order has been made without any sentence having been subsequently pronounced, shall for the purposes of this section be deemed not to have been convicted.

Remit to higher court or other jurisdiction.

286. If either in the preliminary investigation or in the course of the trial of any offence it shall appear that the offence is one which cannot competently be tried in the court before which an accused is brought, or is one which, in the opinion of the court in view of the circumstances of the case, should be dealt with by a higher court, it shall be lawful for the court to commit the accused to prison for examination for any period not exceeding four days, and the prosecutor shall forthwith give notice of such committal to the procurator fiscal of the district within which such offence was committed, or to such other official as may be entitled to take cognizance thereof, in order that the accused may be dealt with according to law.

Boundaries of jurisdiction.

287.—(1) Where an offence is committed in any harbour, river, arm of the sea or other water (tidal or otherwise) which runs between or forms the boundary of the jurisdiction of two or more courts, such offence may be tried by any one of such courts.

(2) Where an offence is committed on the boundary of the jurisdiction of two or more courts, or within the distance of 500 yards of any such boundary, or partly within the jurisdiction of one court and partly within the jurisdiction of another court or courts, such offence may be tried by any one of such courts.

(3) Where an offence is committed on any person or in respect of any property in or upon any carriage, cart or vehicle

employed in a journey by road or railway, or on board any vessel employed in a river, lake, canal or inland navigation, such offence may be tried by any court through whose jurisdiction such carriage, cart, vehicle or vessel passed in the course of the journey or voyage during which the offence was committed, and, where the side, bank, centre or other part of the road, railway, river, lake, canal or inland navigation along which the carriage, cart, vehicle or vessel passed in the course of such journey or voyage is the boundary of the jurisdiction of two or more courts, such offence may be tried by any one of such courts.

(4) Where several offences, which if committed in one sheriff court district could be tried under one complaint, are alleged to have been committed by any person in different sheriff court districts, the accused may be tried for all or any of those offences under one complaint before the sheriff of any one of such sheriff court districts.

(5) Where an offence is authorised by this section to be tried by any court, it may be dealt with, heard, tried, determined, adjudged and punished as if the offence had been committed wholly within the jurisdiction of such court.

Jurisdiction of sheriff.

288.—(1) Subject to the provisions of this section, the jurisdiction of the sheriffs within their respective sheriffdoms shall extend to and include all navigable rivers, ports, harbours, creeks, shores and anchoring grounds in or adjoining such sheriffdoms and shall include all criminal maritime causes and proceedings (including such as may apply to persons furth of Scotland) provided the accused shall upon any legal ground of jurisdiction be subject to the jurisdiction of the sheriff before whom such cause or proceeding may be raised.

(2) It shall not be competent to the sheriff to try any crime committed on the seas which it would not be competent for him to try if the crime had been committed on land.

(3) Where sheriffdoms are separated by a river, firth, or estuary, the sheriffs on either side shall have concurrent jurisdiction over the intervening space occupied by water.

(4) The sheriff shall have a concurrent jurisdiction with every other court within his sheriffdom in relation to all offences competent for trial in such courts.

Summary powers of sheriff.

289. The sheriff shall, without prejudice to any other or wider powers conferred by statute, have power on convicting any person of a common law offence—

(*a*) to impose a fine not exceeding £150 :

PART II

(*b*) to ordain the accused to find caution for good behaviour for any period not exceeding 12 months and to an amount not exceeding £150, such caution being either in lieu of or in addition to a fine or in addition to imprisonment as hereafter in this section mentioned;

(*c*) failing payment of such fine, or on failure to find such caution, to award imprisonment in accordance with section 407 of this Act;

(*d*) to award imprisonment, for any period not exceeding three months.

When six months' imprisonment competent.

290. Where a person is convicted by the sheriff of—

(*a*) a second or subsequent offence inferring dishonest appropriation of property, or attempt thereat, or

(*b*) a second or subsequent offence inferring personal violence,

he may, without prejudice to any wider powers conferred by statute, be sentenced to imprisonment for any period not exceeding six months.

Trial of certain offences.

291.—(1) Any offence described in any statute as a "misdemeanour" or a "crime and offence" may be tried in the sheriff court either on indictment or summarily and, if tried summarily, the imprisonment competent on conviction shall, without prejudice to any wider powers conferred by statute, not exceed three months.

(2) It is hereby declared that it is competent to prosecute summarily in the sheriff court the crime of uttering a forged document.

(3) It is hereby declared that it is competent to prosecute summarily in the sheriff court crimes of robbery and assault with intent to rob.

Theft outside Scotland.

292.—(1) Any person who has in his possession in Scotland property which he has stolen in any other part of the United Kingdom may be dealt with, charged, tried and punished in Scotland in like manner as if he had stolen it in Scotland.

(2) Any person who in Scotland receives property stolen in any other part of the United Kingdom may be dealt with, charged, tried and punished in Scotland in like manner as if it had been stolen in Scotland.

PART II

293. The Lord Advocate may from time to time issue instructions to a chief constable with regard to the reporting, for consideration of the question of prosecution, of offences alleged to have been committed within the area of such chief constable, and it shall be the duty of a chief constable to whom any such instruction is issued to secure compliance therewith.

Instructions by Lord Advocate as to reporting offences.

Procedure prior to trial

294.—(1) Without prejudice to any other powers of arrest, any constable may take into custody, without warrant—

Power of constable to take offenders into custody.

(*a*) any person who within his view commits any of the offences mentioned in Schedule 1 to this Act, if the constable does not know and cannot ascertain his name and address;

(*b*) any person who has committed, or whom he has reason to believe to have committed, any of the offences mentioned in Schedule 1 to this Act, if the constable does not know and cannot ascertain his name and address or has reasonable ground for believing that he will abscond.

(2) Where, under the powers conferred by this section, a constable arrests any person without warrant, the superintendent or inspector of police or an officer of police of equal or superior rank, or the officer in charge of the police station to which the person is brought, shall, unless in his belief the release of the person would tend to defeat the ends of justice, or to cause injury or danger to the child (being a person under the age of 17 years) against whom the offence is alleged to have been committed, release the person arrested on his entering into an obligation to attend at the hearing of the charge or on his finding bail for such amount as may in the judgment of the officer of police be required to secure his attendance.

295.—(1) Upon the apprehension of any person charged with an offence which may be competently tried before a court of summary jurisdiction other than the sheriff court, it shall be lawful for the chief constable, or other officer of police having charge in the absence of the chief constable at any police office or station, to accept bail or deposit, by a surety or by such person, that such person shall appear for trial before such court, or before the sheriff court, at some time and place to be specified, and at all subsequent diets of court and to liberate the person so apprehended upon bail being found to an amount not exceeding £20 or upon the deposit of any money or article of value to the amount of the bail fixed.

Chief constable may in certain cases accept bail.

PART II

(2) On acceptance of deposit under the foregoing subsection the chief constable or other officer of police shall immediately enter the same in a book to be kept for the purpose, and grant an acknowledgment for the money or article so deposited, in which acknowledgment the time and place fixed for the accused's appearance shall be set forth.

(3) The chief constable or other officer of police may refuse, in any such case as aforesaid, if he see cause, to accept bail or deposit; and such refusal, and the detention of the person so apprehended until his case is tried in the usual form, shall not subject the chief constable or other officer of police to any claim for damages, wrongous imprisonment, or claim of any other kind whatsoever.

(4) It shall be lawful to liberate any such person as aforesaid without bail, or to discharge him, if the chief constable or other officer deem it proper so to do.

(5) If any person fails to appear in redemption of his bail or deposit under this section, it may be forfeited and warrant may be granted for his apprehension.

Police liberation or detention of children arrested.

296.—(1) Where a person who is apparentiy a child is apprehended, with or without warrant, and cannot be brought forthwith before a sheriff sitting summarily, a superintendent or inspector of police, or other officer of police of equal or superior rank, or the officer in charge of the police station to which he is brought, shall inquire into the case, and may liberate him on an obligation that he will attend at the hearing of the charge being entered into by him or his parent or guardian or on bail being found by him or his parent or guardian, for such an amount as will, in the opinion of the officer, secure his attendance at the hearing of the charge, and shall so liberate him unless—

(*a*) the charge is one of homicide or other grave crime; or

(*b*) it is necessary in his interest to remove him from association with any reputed criminal or prostitute; or

(*c*) the officer has reason to believe that his liberation would defeat the ends of justice.

(2) Where a person who is apparently a child having been apprehended is not so liberated as aforesaid, the officer of police shall cause him to be detained in a place of safety other than a police station until he can be brought before a sheriff sitting summarily unless the officer certifies—

(*a*) that it is impracticable to do so; or

(*b*) that he is of so unruly a character that he cannot safely be so detained; or

(*c*) that by reason of his state of health or of his mental or bodily condition it is inadvisable so to detain him;

and the certificate shall be produced to the court before which he is brought.

(3) Where a person who is apparently a child has been detained under this section and is not so liberated as aforesaid and it is decided not to proceed with the charge against him a constable shall so inform the reporter of the local authority for the area in which the child is detained, and the child may continue to be detained in a place of safety until the reporter has decided on the course that should be taken with regard to the child under the provisions of Part III of the Social Work (Scotland) Act 1968. 1968 c. 49.

(4) A child shall not continue to be detained under this section—

(*a*) where the reporter considers the child does not require compulsory measures of care,

(*b*) after the day on which a children's hearing first sit to consider his case in pursuance of section 37(4) of the Social Work (Scotland) Act 1968, or

(*c*) for a period exceeding seven days.

Committal of children to custody in place of safety.

297.—(1) Any court, on remanding or committing for trial a child who is not liberated on bail shall, instead of committing him to prison, commit him to the local authority in whose area the court is situated to be detained in a place of safety chosen by the local authority for the period for which he is remanded or until he is liberated in due course of law.

Provided that in the case of a child over 14 years of age it shall not be obligatory on the court so to commit him if the court certifies that he is of so unruly a character that he cannot safely be so committed or that he is of so depraved a character that he is not a fit person to be so detained.

(2) A commitment under this section may be varied, or, in the case of a child over 14 years of age, who proves to be of so unruly a character that he cannot safely be detained in such custody, or to be of so depraved a character that he is not a fit person to be so detained, revoked, by the court which made the order, or if application cannot conveniently be made to that court, by a sheriff sitting summarily having jurisdiction in the place where the court which made the order sat, and if it is revoked the child may be committed to prison.

All offences to be bailable.

298.—(1) All offences shall be bailable, and any judge having jurisdiction to try the offence may, at his discretion, on the application of any person who has been charged with any offence,

PART II

and after opportunity shall have been given to the prosecutor to be heard thereon, admit or refuse to admit such person to bail.

(2) Such application shall be disposed of within 24 hours after its presentation to the judge, failing which the accused shall be forthwith liberated.

Application for review of court's decision on bail and caution.

299.—(1) The following provisions of this section shall apply where a court has refused to admit a person to bail or, where a court has so admitted a person, the bail fixed in his case has not been found.

(2) A court shall, on the application of any such person as aforesaid, have power to review its decision to admit to bail or its decision as to the bail fixed and may, on cause shown, admit the person to bail or, as the case may be, fix bail at a lower amount.

(3) An application under this section, where it relates to the original decision of the court, shall not be made before the fifth day after that decision and, where it relates to a subsequent decision, before the fifteenth day thereafter.

(4) Nothing in the provisions of this section shall affect any right of a person to appeal against the decision of a court in relation to admitting to bail or to the bail fixed.

(5) In the foregoing provisions of this section, any reference to bail includes a reference to caution for interim liberation and any reference to admitting to bail shall include a reference to ordering the finding of caution as aforesaid.

Appeal in respect of bail

300.—(1) Where an application for bail by a person charged with an offence under this Part of this Act is refused or where the applicant is dissatisfied with the amount of bail fixed, he may appeal to the High Court and that court may in its discretion order intimation to the prosecutor and, where an application for bail by any such person is granted, the prosecutor, if dissatisfied with the granting of bail or with the amount fixed may appeal in like manner and, subject as hereinafter provided, the applicant shall in such case not be liberated before such appeal is disposed of.

(2) Notice in writing shall be immediately given by the party appealing under this section to the other party.

(3) An appeal under this section shall be disposed of by the High Court or any Lord Commissioner of Justiciary in court or in chambers after such inquiry and hearing of the parties as shall seem just.

(4) When an appeal is taken by the prosecutor under this section either against the grant of bail or against the amount fixed, the applicant to whom bail has been granted shall, if the bail fixed shall have been found by him, be liberated after 72 hours, or where the place of application is in the Outer Hebrides or in Orkney or Zetland 96 hours, from the granting of the application, whether the appeal be disposed of or not, unless the High Court shall grant order for his further detention in custody. In computing the aforesaid periods, Sundays and public holidays, whether general or court holidays, shall be excluded.

(5) Notice by telegraph to the governor of the prison of the issue under the last foregoing subsection of an order within the time aforesaid bearing to be sent by the Clerk of Justiciary or the Crown Agent or, if the complaint is brought in a court other than the sheriff court, by the prosecutor shall be sufficient warrant for the detention of the applicant pending the arrival of the order in due course of post.

(6) Where an appeal under this section by the prosecutor is refused, the High Court may award expenses against him, but no court or other fees shall be exigible from, and no expenses shall be awarded against, an applicant in respect of his application or of any appeal therein.

Power of court to refund bail.

301. Where any court has made an order for the forfeiture of bail it shall be competent for the court, if it is satisfied that it is reasonable in all the circumstances to do so, to recall the order and direct that the bail money forfeited shall be refunded. Any decision of a court under this section shall be final and not subject to review.

Citation of persons liberated on bail at domiciles specified in bail bonds.

302. All bail bonds whatsoever received in order to obtain the liberation of accused persons from custody shall specify the domicile at which such persons may thereafter be cited for trial before any criminal court.

Caution and bail.

303.—(1) With regard to the finding, forfeiture, and recovery of caution in any proceedings under this Part of this Act the following provisions shall apply:—

(*a*) caution may be found by consignation of the amount with the clerk of court, or by bond of caution, which bond may be signed by the mark of the cautioner;

(*b*) where caution becomes liable to forfeiture, forfeiture may be granted by the court on the motion of the prosecutor, and, where necessary, warrant granted for the recovery thereof;

PART II

(c) in the event of any cautioner failing to pay the amount due under his bond within six days after he has received a charge to that effect, the court may order him to be imprisoned for the maximum period applicable in pursuance of section 407 of this Act to that amount or until payment is made; or the court, if it shall adjudge it expedient, may on the application of the cautioner grant time for payment or may instead of imprisonment order recovery by civil diligence in accordance with section 411 of this Act.

(2) Bail may be found and forfeited, and the like procedure shall be competent in default of payment thereof as is hereinbefore provided with regard to caution; and any bail found shall continue in force until the final determination of the case or until the expiry of six months from the date when such bail is found, whichever shall first occur, notwithstanding that the diets may have been from time to time continued or deserted pro loco et tempore, or not called:

Provided that the cautioner shall be entitled to withdraw his bond of caution at any diet of the court at which the accused appears personally.

(3) Where, instead of being liberated on bail, the accused in a summary prosecution is liberated under a penalty in the event of his failure to appear at any future diet, and such penalty is declared to be forfeited, the amount thereof may be added to any other penalty subsequently imposed on him, or the court may pronounce a separate finding in respect of such penalty and may grant warrant for the imprisonment of the accused in the event of non-payment thereof.

Power to order parents to give security for child's good behaviour.

304.—(1) Where a child has been charged with any offence the court may order his parent or guardian to give security for his co-operation in securing the child's good behaviour.

(2) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.

(3) Any sums ordered on forfeiture of any such security as aforesaid to be paid by a parent or guardian may be recovered from him by civil diligence or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child was charged.

PART II

Intimation to solicitor.

305. In any proceedings under this Part of this Act the accused, if apprehended, shall immediately on apprehension be entitled, if he so desires, to have intimation sent to a solicitor, and to have a private interview with such solicitor prior to being brought before the court.

Separation of children from adults at courts, etc.

306. Arrangements shall be made for preventing a child while detained in a police station, or while being conveyed to or from any criminal court, or while waiting before or after attendance in any criminal court, from associating with an adult (not being a relative) who is charged with any offence other than an offence with which the child is jointly charged, and for ensuring that a female child shall, while so detained, being conveyed, or waiting, be under the care of a woman.

Attendance at court of parent of child charged with an offence, etc.

307.—(1) Where a child is charged with any offence, his parent or guardian may in any case, and shall, if he can be found and resides within a reasonable distance, be required to attend at the court before which the case is heard or determined during all the stages of the proceedings, unless the court is satisfied that it would be unreasonable to require his attendance.

(2) Where the child is arrested, the constable by whom he is arrested or the officer of police in charge of the police station to which he is brought shall cause the parent or guardian of the child, if he can be found, to be warned to attend at the court before which the child will appear.

(3) For the purpose of enforcing the attendance of a parent or guardian and enabling him to take part in the proceedings and enabling orders to be made against him, rules may be made under section 457 of this Act, for applying, with the necessary adaptations and modifications, such of the provisions of this Part of this Act as appear appropriate for the purpose.

(4) The parent or guardian whose attendance shall be required under this section shall be the parent or guardian having the actual possession and control of the child:

Provided that, if that person is not the father, the attendance of the father may also be required.

(5) The attendance of the parent of a child shall not be required under this section in any case where the child was before the institution of the proceedings removed from the custody or charge of his parent by an order of a court.

PART II

Notice to local authority of charge against a child.

308.—(1) Where a child is to be brought before a court, notification of the day and hour when, and the nature of the charge on which, the child is to be so brought shall be sent by the chief constable of the area in which the offence is alleged to have been committed to the local authority for the area in which the court will sit.

(2) Where a local authority have received a notification under the foregoing subsection they shall make such investigations and render to the court a report which shall contain such information as to the home surroundings of the child as appear to them will assist the court in the disposal of his case, and the report shall contain information, which the appropriate education authority shall have a duty to supply, as to the school record, health and character of the child.

Forms of procedure. 1954 c. 48.

309.—(1) The forms of procedure under this Part of this Act shall be in the forms set out in Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act or as nearly as may be in such forms.

(2) Warrants of apprehension and search shall be signed by the judge granting the same, but all other warrants, orders of court, and sentences may be signed either by the judge or by the clerk of court, and execution upon any warrant, order of court, or sentence may proceed either upon such warrant, order of court, or sentence itself or upon an extract thereof issued and signed by the clerk of court.

(3) Where, as preliminary to any procedure, a sworn information is required, such information may be sworn to before any judge, whether the subsequent procedure be in his court or another court.

Incidental applications.

310. Where prior to the presentation of a complaint it is necessary to apply to a court for any warrant or order of court as incidental to subsequent procedings by complaint, or where a court has power to grant any warrant or order of court, although no subsequent proceedings by complaint may follow thereon, such application may be by petition at the instance of a prosecutor in the form set out in Part I of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act or as nearly as may be in such form and, where necessary for the execution of any such warrant or order of court, warrant to break open lockfast places shall be implied.

Complaint.

311.—(1) All proceedings under this Part of this Act for the trial of offences or recovery of penalties shall be instituted by complaint in the form set out in Part II of Schedule 2 to

the Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act or as nearly as may be in such form. 1954 c. 48.

(2) Such complaint shall be signed by the prosecutor or by any solicitor on behalf of a prosecutor other than the public prosecutor of a court.

(3) A solicitor may appear for and conduct any prosecution on behalf of a prosecutor other than the public prosecutor of a court.

(4) A complaint at the instance of a private prosecutor for an offence at common law or for a statutory offence where imprisonment without the option of a fine is competent shall, unless otherwise provided in any statute, require the concurrence of the public prosecutor of the court in which the complaint is brought.

(5) Where a complaint includes any statutory charge a notice in the form set out in Form No. 1 of Part III of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in the corresponding form set out in an Act of Adjournal under this Act or as nearly as may be in such form shall be served on the accused with the complaint when he is cited to a diet, and where he is in custody the complaint and such a notice shall be served on him before he is asked to plead, and a copy of any notice so served shall, where the judge is satisfied that the charge is proved, be laid before him by the prosecutor, and shall be entered in the record of the proceedings.

Form of the charge in complaint.

312. The charge in a complaint under this Part of this Act shall be stated in the form, as nearly as may be, of the appropriate form contained in Part II of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act. No further specification shall be required than a specification similar to that given in that form and—

(*a*) a person accused may be named and designed according to the existing practice, or he may be named by the name given by him and designed as of the place given by him as his residence when he is examined on declaration, and it shall not be necessary to set forth any other name or names by which he may be known, or any other address or designation;

(*b*) it shall not be necessary to specify by any *nomen juris* the offence which is charged, but it shall be sufficient that the complaint sets forth facts relevant and sufficient to constitute an offence punishable on complaint;

PART II

(*c*) when two or more persons are charged together with committing an offence punishable on complaint, it shall not be necessary to allege that "both and each or one or other," or that "all and each or one or more" of them committed the offence, or did or failed to do any particular act, but such alternatives shall be implied;

(*d*) it shall not be necessary to state that a person accused is "guilty, actor or art and part", but such charge shall be implied;

(*e*) it shall not be necessary to allege that any act of commission or omission therein charged was done or omitted to be done "wilfully" or "maliciously", or "wickedly and feloniously", or "falsely and fraudulently", or "knowingly", or "culpably and recklessly", or "negligently", or in "breach of duty", or to use such words as "knowing the same to be forged", or "having good reason to know", or "well knowing the same to have been stolen", or to use any similar words or expressions qualifying any act charged, but such qualifying allegation shall be implied;

(*f*) the latitude in use to be taken in stating time shall be implied in all statements of time where an exact time is not of the essence of the charge, and the latitude in use to be taken in stating any place by adding to the word "at", or to the word "in", the words "or near", or the words "or in the near neighbourhood thereof", or similar words, shall be implied in all statements of place where the actual place is not of the essence of the charge, and where the circumstances of the offence charged make it necessary to take an exceptional latitude in regard to time or place it shall not be necessary to set forth such circumstances, or to set forth that the particular time or the particular place is to the prosecutor unknown; provided that where exceptional latitude is taken, the court shall, if satisfied that such exceptional latitude was not reasonable in the circumstances of the case, give such remedy to the accused by adjournment of the trial or otherwise as shall seem just;

(*g*) the latitude in use to be taken in describing quantities by the words "or thereby", or the words "or part thereof", or the words "or some other quantity to the prosecutor unknown" or similar words, shall be implied in all statements of quantities, and the latitude in use to be taken in stating details connected with the perpetration of any act regarding persons, things or modes

by inserting general alternative statements followed by the words " to the prosecutor unknown ", or similar words, shall be implied ;

(*h*) where in a complaint, whether raised under statute or at common law, buildings, goods, money, or property of any other description are mentioned, it shall not be necessary to allege the property or possession thereof to be in any person, official, corporation or company, or that the same were not the property of the accused, and the allegation that the same were not the property of the accused shall be implied where it is essential to the criminality of the charge ;

(*i*) where in a complaint or any list or inventory relative thereto any person is referred to, it shall be sufficient to describe him by his name and ordinary address, and it shall not be necessary to describe him as " now or lately " residing at such address, but such words shall be implied, and where goods, articles or things require to be described, it shall be sufficient to describe them in general terms without specifying the materials of which they are made, or any particulars which distinguish them from other goods, articles or things of a similar kind except in cases in which such particulars are essential to the constitution of the offence charged ;

(*j*) the word " money " shall include all current coin of the realm, post office orders and postal orders, and bank or banker's notes, and it shall not be necessary to specify in relation to a sum of money whether such sum consisted of gold, silver or other coin, post office orders or postal orders, or bank or banker's notes, or any of them, but it shall be sufficient to state the sum as consisting of money ;

(*k*) where any document requires to be referred to, it shall not be necessary to set forth the document or any part of it, but it shall be sufficient to refer to such document by a general description ;

(*l*) criminal resetting of property shall not be limited to the receiving of property taken by theft or robbery, but shall extend to the receiving of property appropriated by breach of trust and embezzlement, and by falsehood fraud and wilful imposition, and under any complaint charging the resetting of property dishonestly appropriated by any of these means, it shall not be necessary to set forth any details of the offence by which the dishonest appropriation was accomplished, but it shall be sufficient to set forth that the accused received such property, it having been dishonestly appropriated by

PART II

theft or robbery, or by breach of trust and embezzlement, or by falsehood fraud and wilful imposition, as the case may be;

(*m*) under a complaint for robbery, or for theft, or for breach of trust and embezzlement, or for falsehood fraud and wilful imposition, a person accused may be convicted of reset; under a complaint for robbery, or for breach of trust and embezzlement, or for falsehood fraud and wilful imposition, a person accused may be convicted of theft; under a complaint for theft, a person accused may be convicted of breach of trust and embezzlement, or of falsehood fraud and wilful imposition, or may be convicted of theft, although the circumstances proved may in law amount to robbery.

The power conferred by the last foregoing paragraph to convict a person of an offence other than the offence charged in a complaint shall be exercisable by the sheriff court before which such person is tried notwithstanding that that other offence was committed outside the jurisdiction of that sheriff court;

(*n*) where two or more offences or acts constituting offences are charged cumulatively, it shall be lawful to convict of any one or more of them, and any part of what is charged in a complaint, constituting in itself an offence punishable on complaint, shall be deemed separable to the effect of making it lawful to convict of such offence, and where any offence is charged as having been committed with a particular intent or with particular circumstances of aggravation, it shall be lawful to convict of the offence without such intent or aggravation;

(*o*) attempt to commit any offence punishable on complaint shall itself be an offence punishable on complaint, and under a complaint which charges a completed offence the accused may be lawfully convicted of an attempt to commit such offence; and under a complaint charging an attempt, the accused may be convicted of such attempt although the evidence be sufficient to prove the completion of the offence said to have been attempted; and under a complaint charging an offence which imports personal injury inflicted by the accused, resulting in death or serious injury to the person, the accused may be lawfully convicted of the assault or other injurious act, and may also be lawfully convicted of the aggravation that such assault or other injurious act was committed with intent to commit such offence;

(*p*) the description of any offence in the words of the statute or order contravened, or in similar words, shall be sufficient;

(*q*) the statement that an act was done contrary to a statute or order shall imply a statement that the statute or order applied to the circumstances existing at the time and place of the offence, that the accused was a person bound to observe the same, that any necessary preliminary procedure had been duly gone through, and that all the circumstances necessary to a contravention existed; in the case of the contravention of an order, such statement shall imply a statement that the order was duly made, confirmed, published and generally made effectual according to the law applicable, and was in force at the time and place in question;

(*r*) where the offence is created by more than one section of one or more statutes or orders, it shall be necessary to specify only the leading section or one of the leading sections;

(*s*) it shall not be necessary for an offence punishable under any Act of Parliament to quote the Act of Parliament or any part of it, but it shall be sufficient to allege that the offence was committed contrary to such Act of Parliament, and to refer to the Act and any section of the Act founded on without setting forth the enactment at length;

(*t*) where any act set forth in a complaint as contrary to any Act of Parliament is also criminal at common law, or where the facts proved under such a complaint do not amount to a contravention of the statute, but do amount to an offence at common law, it shall be lawful to convict of the common law offence;

(*u*) when in a trial the evidence shall be sufficient to prove the identity of any person, corporation or company, or of any place, or of any thing, it shall not be a valid objection to the sufficiency of such evidence that any particulars set forth in regard thereto in the complaint have not been proved;

(*v*) any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany in the same section the description of the offence in the statute or order creating the offence, may be proved by the accused, but need not be specified or negatived in the complaint, and no proof in relation to such exception, exemption, proviso, excuse or qualification shall be required on behalf of the prosecution;

PART II

(*w*) it shall be competent to include in one complaint both common law and statutory charges;

(*x*) where an offence is alleged to be committed in any special capacity, as by the holder of a licence, master of a vessel, occupier of a house or the like, the fact that the accused possesses the qualification necessary to the commission of the offence shall, unless challenged by preliminary objection before his plea is recorded, be held as admitted;

(*y*) in any proceedings under the Merchant Shipping Acts it shall not be necessary to produce the official register of the ship referred to in the proceedings in order to prove the nationality of the ship, but the nationality of the ship as stated in the complaint shall, in the absence of evidence to the contrary, be presumed;

(*z*) in offences inferring dishonest appropriation of property brought before a court whose power to deal with such offences is limited to cases in which the value of such property does not exceed £10 it shall be assumed, and it shall not be necessary to state in the charge, that the value of the property does not exceed that sum.

Mode of charging certain offences committed against two or more children under 17.

313.—(1) Where a person is charged with committing any of the offences mentioned in Schedule 1 to this Act in respect of two or more children under the age of 17 years, the same complaint may charge the offence in respect of all or any of them, but the person charged shall not, if he is convicted, be liable to a separate penalty in respect of each child except upon separate complaints.

(2) The same complaint may also charge any person as having the custody, charge, or care, alternatively or together, and may charge him with the offences of assault, ill-treatment, neglect, abandonment, or exposure, together or separately, and may charge him with committing all or any of those offences in a manner likely to cause unnecessary suffering or injury to health, alternatively or together, but when those offences are charged together the person charged shall not, if he is convicted, be liable to a separate penalty for each.

(3) When any offence mentioned in Schedule 1 to this Act charged against any person is a continuous offence, it shall not be necessary to specify in the complaint the date of the acts constituting the offence.

Orders of court on complaint.

314.—(1) On any complaint under this Part of this Act being laid before a judge of the court in which the complaint is brought, he shall have power on the motion of the prosecutor—

(*a*) to pronounce an order of court assigning a diet for the disposal of the case to which the accused may be cited as after-mentioned;

(*b*) to grant warrant to apprehend the accused where this appears to the judge expedient;

(*c*) to grant warrant to search the person, dwelling-house and repositories of the accused and any place where he may be found for any documents, articles, or property likely to afford evidence of his guilt of, or guilty participation in, any offence charged in the complaint, and to take possession of such documents, articles or property;

(*d*) to grant any other order of court or warrant or interim order of court of warrant which may be competent in the circumstances.

(2) The power under the foregoing subsection to grant a warrant to apprehend the accused shall be exercisable notwithstanding that there is power whether at common law or under any Act to apprehend him without a warrant.

(3) Where a diet has been fixed in a summary prosecution, it shall be competent for the court, on a joint application in writing by the parties or their solicitors, to discharge the diet so fixed and fix in lieu thereof an earlier or a later diet.

Citation.

315.—(1) This Act shall be a sufficient warrant for the citation of the accused and witnesses in a summary prosecution to any ordinary sitting of the court or to any special diet fixed by the court or any adjournment thereof.

1954 c. 48.

(2) Such citation shall be in the form, as nearly as may be, of the appropriate form contained in Part IV of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act and shall in the case of the accused proceed on an induciae of at least 48 hours unless in the special circumstances of the case the court fixes a shorter induciae.

(3) The foregoing provisions of this section as to the citation of witnesses shall apply to the citation of witnesses for precognition by the prosecutor where a judge on the application of such prosecutor shall deem it expedient to grant warrant to cite witnesses for precognition in regard to any offence which may be competently tried in the court of that judge, and whether or not any person has at the time of such application been charged with such offence.

Manner of citation.

316.—(1) The citation of the accused and witnesses in a summary prosecution to any ordinary sitting of the court or to any special diet fixed by the court or to any adjourned sitting or diet of such court shall be effected as provided in this section.

PART II

(2) It shall be deemed a legal citation of the accused or a witness to such a sitting or diet or adjourned sitting or diet as is mentioned in the foregoing subsection:—

(*a*) if the citation be delivered to him personally or left for him at his dwelling-house or place of business with some person resident or employed therein or, where he has no known dwelling-house or place of business, at any other place in which he may at the time be resident,

(*b*) where the accused or witness is the master of, or a seaman or person employed in a vessel, if the citation is left with a person on board thereof and connected therewith,

(*c*) where the accused is a company, association or corporation, if the citation is left at their ordinary place of business with a partner, director, secretary or other official, or if the company, association or corporation is cited in the same manner as if the proceedings were in a civil court, or

(*d*) where the accused is a body of trustees, if the citation is left with any one of them who is resident in Scotland or with their known solicitor in Scotland.

(3) It shall be deemed a legal citation of the accused to such a sitting or diet or adjourned sitting or diet as is mentioned in subsection (1) hereof, if the citation be signed by the prosecutor and sent by post in a registered envelope or through the recorded delivery service to the dwelling-house or place of business of such accused, or, if he has no known dwelling-house or place of business, to any other place in which he may at the time be resident:

Provided that, if the accused shall fail to appear at a diet or sitting or adjourned diet or sitting to which he has been cited in the manner provided by this subsection, paragraphs (*b*) and (*c*) of section 338 of this Act shall not apply unless it shall have been proved to the court that he received the citation or that the contents thereof came to his knowledge.

(4) The production in court of any letter or other communication purporting to be written by or on behalf of an accused who has been cited in the manner provided in subsection (3) hereof in such terms as to infer that the contents of such citation came to his knowledge, shall be admissible as evidence of that fact for the purposes of the proviso to that subection.

Citation of probationer.

317. The citation of a probationer to appear before a court of summary jurisdiction in terms of section 387(1) or 388(1) of this Act shall be effected in like manner, mutatis mutandis, as the citation of an accused to a sitting or diet of the court.

PART II

Citation of offender.

318.—(1) The citation of an offender to appear before a court of summary jurisdiction in terms of section 398(2)(*a*) of this Act shall be effected in like manner, mutatis mutandis, as the citation of an accused to a sitting or diet of the court:

Provided that the citation shall be signed by the clerk of the court before which the offender is required to appear, instead of by the prosecutor, and provided also that the forms contained in Part IV of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 and the corresponding forms contained in an Act of Adjournal under this Act shall not apply to such citation.

1954 c. 48.

(2) The citation of such an offender shall be in the appropriate form contained in an Act of Adjournal under this Act, or as nearly as may be in such form.

(3) If the citation of such an offender shall have been effected by an officer of law, the written execution, if any, of that officer of law shall be in the appropriate form contained in an Act of Adjournal under this Act, or as nearly as may be in such form.

Citation by post.

319.—(1) When the citation of any person other than a witness is effected by post in terms of any of the foregoing provisions of this Act, the induciae shall be reckoned from 24 hours after the time of posting.

(2) It shall be sufficient evidence that a citation has been sent by post in terms of any of the foregoing provisions of this Act, if there is produced in court a written execution, signed by the person who signed such citation and in the appropriate form contained in an Act of Adjournal under this Act, or as nearly as may be in such form, together with the post office receipt for the relative registered or recorded delivery letter.

Apprehension of witness.

320. Where a witness after being duly cited fails to appear at the diet fixed for his attendance and no just excuse is offered on his behalf, the court may issue a warrant for his apprehension; or the court, if satisfied by evidence on oath that a witness is not likely to attend to give evidence without being compelled so to do, may issue a warrant for his apprehension in the first instance.

Warrants of apprehension and search.

321.—(1) A warrant of apprehension or search may be in the form, as nearly as may be, of the appropriate form contained in Part IV of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act, and any

PART II

warrant of apprehension or search shall, where it is necessary for its execution, imply warrant to officers of law to break open shut and lockfast places.

(2) A warrant of apprehension of an accused person in such form as aforesaid shall imply warrant to officers of law to search for and to apprehend the accused, and to bring him before the court issuing the warrant, or before any other court competent to deal with the case, to answer to the charge on which such warrant is granted, and, in the meantime, until he can be so brought, to detain him in a police station house, police cell, or other convenient place.

(3) A person apprehended under any such warrant as aforesaid or by virtue of the powers possessed at common law, or conferred by statute, shall wherever practicable be brought before a court competent to deal with the case either by way of trial or by way of remit to another court not later than in the course of the first lawful day after such person shall be taken into custody, such day not being a public or local holiday.

(4) A warrant of apprehension or other warrant shall not be required for the purpose of bringing before the court an accused person who had been apprehended without a written warrant or who attends without apprehension in answer to any charge made against him.

(5) A warrant of apprehension of a witness in the appropriate form shall imply warrant to officers of law to search for and apprehend the witness, and to detain him in a police station house, police cell, or other convenient place, until the date fixed for the hearing of the case, unless sufficient security be found to the amount fixed in the warrant for the appearance of such witness at all diets of court.

Warrants for arrest of escaped prisoners and mental patients.

322.—(1) On an application being made to a sheriff or justice alleging that any person is—

(*a*) an offender unlawfully at large from a prison or other institution to which the Prison Act applies in which he is required to be detained after being convicted of an offence; or

(*b*) a convicted mental patient liable to be retaken under section 40 or 140 of the Mental Health Act 1959, section 36 or 106 of the Mental Health (Scotland) Act 1960 or section 30 or 108 of the Mental Health Act (Northern Ireland) 1961 (retaking of mental patients who are absent without leave or have escaped from custody);

1959 c. 72.
1960 c. 61.
1961 c. 15 (N.I.).

the sheriff or justice may issue a warrant to arrest him and bring him before any sheriff.

(2) Where a person is brought before a sheriff in pursuance of a warrant for his arrest under this section, the sheriff shall, if satisfied that he is the person named in the warrant and if satisfied as to the facts mentioned in paragraph (*a*) or (*b*) of the foregoing subsection, order him to be returned to the prison or other institution where he is required or liable to be detained or, in the case of a convicted mental patient, order him to be kept in custody or detained in a place of safety pending his admission to hospital.

(3) Section 139 of the Mental Health Act 1959, section 105 of the Mental Health (Scotland) Act 1960 and section 107 of the Mental Health Act (Northern Ireland) 1961 (custody, conveyance and detention of certain mental patients) shall apply to a convicted mental patient required by this section to be conveyed to any place or to be kept in custody or detained in a place of safety as they apply to a person required by or by virtue of the said Act of 1959, 1960 or 1961, as the case may be, to be so conveyed, kept or detained. 1959 c. 72. 1960 c. 61. 1961 c. 15 (N.I.).

(4) In this section—

"convicted mental patient" means a person liable after being convicted of an offence to be detained under Part V of the Mental Health Act 1959, Part V of the Mental Health (Scotland) Act 1960, Part III of the Mental Health Act (Northern Ireland) 1961 or section 330, 376, 378 or 379 of this Act in pursuance of a hospital order or transfer direction together with an order or direction restricting his discharge;

"place of safety" has the same meaning as in Part V of the said Act of 1959, or Part III of the said Act of 1961, or section 462 of this Act as the case may be;

"Prison Act" means the Prison Act 1952, the Prisons (Scotland) Act 1952 or the Prison Act (Northern Ireland) 1953, as the case may be. 1952 c. 52. 1952 c. 61. 1953 c. 18 (N.I.).

Warrant to search for or remove a child.

323.—(1) If, on an application to a justice by any person who, in the opinion of the justice, is acting in the interests of a child, it appears to the justice on information on oath that there is reasonable cause to suspect—

(*a*) that the child has been or is being assaulted, ill-treated, or neglected in any place within the jurisdiction of the justice, in a manner likely to cause him unnecessary suffering or injury to health, or

(*b*) that any offence mentioned in Schedule 1 to this Act has been or is being committed in respect of the child,

the justice may issue a warrant authorising any constable named therein to search for the child and, if it is found that he has been or is being assaulted, ill-treated or neglected in

PART II

manner aforesaid, or that any such offence as aforesaid has been or is being committed in respect of him, to take him to and detain him in a place of safety, or authorising any constable to remove him with or without search to a place of safety and detain him there.

(2) A child shall not continue to be detained under the last foregoing subsection—

(*a*) where the reporter considers the child does not require compulsory measures of care, or

(*b*) after the day on which a children's hearing first sit to consider his case in pursuance of section 37(4) of the Social Work (Scotland) Act 1968, or

1968 c. 49.

(*c*) for a period exceeding seven days.

(3) A justice issuing a warrant under this section may by the same warrant cause any person accused of any offence in respect of the child to be apprehended and brought before the sheriff, and proceedings to be taken against him according to law.

(4) Any constable authorised by warrant under this section to search for or, with or without search, to remove any child may enter (if need be by force) any house, building, or other place specified in the warrant, and may remove him therefrom.

(5) Every warrant issued under this section shall be addressed to and executed by a constable, who shall be accompanied by the person making the application if that person so desires, unless the justice by whom the warrant is issued otherwise directs, and may also, if the justice by whom the warrant is issued so directs, be accompanied by a duly qualified medical practitioner.

(6) It shall not be necessary in any application, information or warrant under this section to name the child.

Backing of certain warrants from the Isle of Man.

324.—(1) A warrant issued in the Isle of Man for the arrest of a person charged with an offence may, after it has been endorsed by a justice in Scotland, be executed there by the person bringing that warrant, by any person to whom the warrant was originally directed or by any officer of law of the sheriff court district where the warrant has been endorsed as aforesaid in like manner as any such warrant issued in Scotland.

(2) In this section "endorsed" means endorsed in the like manner as a process to which section 4 of the Summary Jurisdiction (Process) Act 1881 applies.

1881 c. 24.

PART II
Execution of Scottish warrants in England and vice versa.
1952 c. 55.

325.—(1) A warrant issued in Scotland for the apprehension of a person charged with an offence may be executed in England by any constable acting within his police area; and subsections (3) and (4) of section 102 of the Magistrates' Courts Act 1952 (execution on Sunday and execution without possession of the warrant) shall apply to the execution in England of any such warrant.

(2) A warrant issued in England for the arrest of a person charged with an offence may be executed in Scotland by any constable appointed for a police area in like manner as any such warrant issued in Scotland.

(3) A warrant may be executed by virtue of this section whether or not it has been endorsed under section 14 or 15 of the Indictable Offences Act 1848. 1848 c. 42.

(4) Nothing in this section affects the execution in Scotland of a warrant to which section 123 of the Bankruptcy Act 1914 applies. 1914 c. 59.

Service of complaints, etc.

326.—(1) Any complaint, warrant, or other proceeding under this Part of this Act may without endorsation be served or executed at any place within Scotland by any officer of law, and such service or execution may be proved either by the oath in court of such officer or by production of his written execution. The Indictable Offences Act 1848 and the Indictable Offences Act Amendment Act 1868 shall, for the purpose of this Part of this Act, apply to all offences which may be tried by the court issuing any competent warrant, order of court, or other process. 1868 c. 107.

(2) Nothing in section 6(3) (extent) of the Magistrates' Courts Act 1957 or in the Summary Jurisdiction (Process) Act 1881 shall be construed as precluding the service in Scotland, with a summons which is so served under the said Act of 1881, of any such notice or statement as is mentioned in subsection (1) of section 1 of the said Act of 1957 (plea of guilty in absence of accused). 1957 c. 29. 1881 c. 24.

Sheriff's warrant may be executed out of district.

327.—(1) Any warrant granted by a sheriff against—

(*a*) a person charged with having committed a crime or offence within the jurisdiction of that sheriff; or

(*b*) a person as being in meditatione fugae,

shall be sufficient for the apprehension of that person within any other sheriff court district, and for conveying and disposing of him in terms of the warrant, without the necessity of its being backed or endorsed by any other justice.

(2) Such warrant may be executed throughout Scotland in like manner as it may be executed within the jurisdiction of the sheriff who granted the warrant.

Adjournment for inquiry, etc.

328. A court of summary jurisdiction, in order to allow time for inquiry into any case, or for any other necessary cause, and

PART II

without calling on the accused to plead to any charge against him, may from time to time continue the case for such reasonable time as may in the circumstances be necessary, not exceeding in all a period of seven days, or on special cause shown 21 days, from the date of the apprehension of the accused, and may liberate him on bail or commit him to prison, either without bail or with bail to an amount fixed by the court:

Provided that no judge shall be entitled to allow bail in a case which he is not competent to try.

Remand and committal of persons under 21.

329.—(1) Where a court remands or commits for trial or for sentence a person under 21 years of age who is charged with or convicted of an offence and is not released on bail, then, except as otherwise expressly provided by this section, the following provisions shall have effect, that is to say—

(*a*) subject to the following paragraph, if he is under 16 years of age the court shall commit him to the local authority in whose area the court is situated, and the authority shall have the duty of placing him in a suitable place of safety chosen by the authority instead of committing him to prison;

(*b*) if he is a person of over 16 years of age, or a child under 16 years of age but over 14 years of age who is certified by the court to be unruly or depraved, and the court has been notified by the Secretary of State that a remand centre is available for the reception from that court of persons of his class or description, he shall be committed to a remand centre instead of being committed to prison.

(2) Where any person is committed to a local authority or to a remand centre under any provision of this Act, that authority or centre shall be specified in the warrant, and he shall be detained by the authority or in the centre for the period for which he is committed or until he is liberated in due course of law.

(3) Where any person has been committed to a local authority under any provision of this Act, the court by which he was committed, if the person so committed is not less than 14 years of age and it appears to the court that he is unruly or depraved, may revoke the commitment and commit the said person—

(*a*) if the court has been notified that a remand centre is available for the reception from that court of persons of his class or description, to a remand centre; and

(*b*) if the court has not been so notified, to a prison.

(4) Where, in the case of a person under 16 years of age who has been committed to prison or to a remand centre under this section, the sheriff is satisfied that his detention in prison

or a remand centre is no longer necessary, he may revoke the commitment and commit the person to the local authority in whose area the court is situated, and the authority shall have the duty of placing him in a suitable place of safety.

Power of court to commit to hospital a person suffering from mental disorder.

330.—(1) Where a court remands or commits for trial a person charged with any offence who appears to the court to be suffering from mental disorder, and the court is satisfied that a hospital is available for his admission and suitable for his detention, the court may, instead of remanding him in custody, commit him to that hospital.

(2) Where any person is committed to a hospital as aforesaid, the hospital shall be specified in the warrant and, if the responsible medical officer is satisfied that he is suffering from mental disorder of a nature or degree which warrants his admission to a hospital under Part IV of the Mental Health (Scotland) Act 1960, he shall there be detained for the period for which he is remanded or the period of committal, unless before the expiration of that period he is liberated in due course of law. 1960 c. 61.

(3) When the responsible medical officer has examined the person so detained he shall report the result of that examination to the court and, where the report is to the effect that the person is not suffering from mental disorder of such a nature or degree as aforesaid, the court may commit him to any prison or other institution to which he might have been committed had he not been committed to hospital or may otherwise deal with him according to law.

(4) No person shall be committed to a hospital under this section except on the written or oral evidence of a medical practitioner.

Statutory offences time-limit.

331.—(1) Proceedings under this Part of this Act in respect of the contravention of any statute or order shall, unless the statute or order under which the proceedings are brought fixes any other period, be commenced within six months after the contravention occurred and, in the case of a continuous contravention, within six months after the last date of such contravention, and it shall be competent in such case in any prosecution to include the entire period during which the contravention has occurred.

(2) A person shall not be summarily convicted of an offence mentioned in Schedule 1 to this Act unless the offence was

PART II

wholly or partly committed within six months before the proceedings against him in respect of the offence were commenced; but, subject as aforesaid, evidence may be taken of acts constituting, or contributing to, the offence and committed at any previous time.

(3) For the purposes of this section proceedings shall be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted, if such warrant is executed without undue delay.

Power to recover penalties.

332.—(1) All penalties, for the recovery of which no special provision has been made by statute or order, may be recovered by the public prosecutor in any court having jurisdiction.

(2) Where a court has power to take cognisance of an offence the penalty attached to which is not defined, the punishment therefore shall be regulated by that applicable to common law offences in that court.

Offences by companies, etc.

333. With regard to the summary prosecution of offences committed by a company, association, incorporation or body of trustees, the following provisions shall, without prejudice to any other or wider powers conferred by statute, apply:—

(*a*) proceedings may be taken against the company, association, incorporation or body of trustees in their corporate capacity, and in that event any penalty imposed shall be recovered by civil diligence in manner hereinafter provided; or

(*b*) proceedings may be taken against an individual representative of such company, association or incorporation as follows:—

(i) in the case of an ordinary company or firm, any one of the partners thereof, or the manager or the person in charge or locally in charge of the affairs thereof, may be dealt with as if he was the person offending;

(ii) in the case of an association, incorporation or incorporated company, the managing director or the secretary or other person in charge, or locally in charge, of the affairs thereof, may be dealt with as if he was the person offending;

(iii) the offence shall be deemed to be the offence of such company, association or incorporation.

Trial Procedure PART II

Procedure at first diet, etc.

334.—(1) Where the accused is present at the first calling of the case in a summary prosecution, and—

(*a*) the complaint has been served on him, or

(*b*) the complaint or the substance thereof has been read to him, or

(*c*) he has legal assistance in his defence,

he shall be asked to plead in common form, and he may, prior to pleading, state objections to the competency or relevancy of the complaint or the proceedings and no such objections shall be allowed to be stated at any future diet in the case except with the leave of the court, which may be granted only on cause shown.

(2) Objections to the competency or relevancy of a summary complaint or the proceedings thereon may, in the absence of the accused, be stated by counsel or by a solicitor on his behalf, and where such objections are so stated the provisions of this Part of this Act shall apply in like manner as if the accused had appeared and stated the objections.

(3) Where the accused is not present at a calling of the case in a summary prosecution and either—

(*a*) the prosecutor produces to the court written intimation that the accused pleads not guilty or pleads guilty and the court is satisfied that such written intimation has been made or authorised by the accused, or

(*b*) a solicitor, or a person not being a solicitor who satisfies the court that he is authorised by the accused, appears on behalf of the accused and tenders a plea of not guilty or a plea of guilty,

then—

(i) in the case of a plea of not guilty, the provisions of this Part of this Act except paragraph (*a*) of section 337 shall apply in like manner as if the accused had appeared and tendered the plea, and

(ii) in the case of a plea of guilty, the court may, if the prosecutor accepts the plea, proceed to hear and dispose of the case in the absence of the accused in like manner as if he had appeared and pled guilty, or may, if it thinks fit, continue the case to another diet and require the attendance of the accused with a view to pronouncing sentence in his presence.

(4) Where in pursuance of paragraph (ii) of the last foregoing subsection the court proceeds to hear and dispose of a case in the absence of the accused, it shall not pronounce a sentence of imprisonment or of Borstal training or of detention in a

PART II

detention centre, young offenders institution, remand centre, or other establishment.

(5) In this section a reference to a plea of guilty shall include a reference to a plea of guilty to a part only of the charge:

Provided that where such a plea is not accepted by the prosecutor it shall be deemed to be a plea of not guilty.

(6) It shall not be competent for any person appearing to answer a complaint, or for a solicitor appearing for the accused in his absence, to plead want of due citation or informality therein or in the execution thereof.

Amendment of complaint.

335.—(1) It shall be competent at any time prior to the determination of a summary prosecution, unless the court sees just cause to the contrary, to amend the complaint or any notice of penalty or previous conviction relative thereto by deletion, alteration or addition so as to cure any error or defect therein, or to meet any objection thereto, or to cure any discrepancy or variance between the complaint or notice and the evidence.

(2) Nothing in this section shall authorise an amendment which changes the character of the offence charged, and if the court shall be of opinion that the accused may in any way be prejudiced in his defence on the merits of the case by any amendment made under this section, the court shall grant such remedy to the accused by adjournment or otherwise as it shall think just.

(3) An amendment made under this section shall be sufficiently authenticated by the initials of the clerk of court.

Plea of guilty.

336. Where the accused in a summary prosecution pleads guilty to the charge or to any part thereof, and his plea is accepted by the prosecutor, the plea shall be recorded and signed by the judge or clerk of court, and the court shall thereafter dispose of the case at the same or any adjourned diet. The plea and sentence may be combined, in which case one signature shall be sufficient to authenticate both.

Plea of not guilty.

337. Where the accused in a summary prosecution pleads not guilty to the charge or guilty to part only thereof, and the prosecutor does not accept such partial plea, the following provisions shall apply:—

(*a*) the court may proceed to trial at once unless either party moves for an adjournment and the court shall adjudge it expedient to grant it; or

(*b*) the court may adjourn the case for trial to as early a diet as is consistent with the just interest of both parties,

in which case the prosecutor shall, if requested by the accused, furnish him with a copy of the complaint if he does not already have one;

(*c*) where the accused is brought before the court by apprehension he shall be entitled to an adjournment of the case for not less than 48 hours, if the request for such adjournment is made before the prosecutor has commenced his proof, and the court shall inform the accused of his right to such adjournment:

Provided that the case may proceed to trial at once or on a shorter adjournment than 48 hours if the court considers that necessary to secure the examination of witnesses who otherwise would not be available;

(*d*) where the accused is in custody, he may be committed to prison or to legalised police cells or to any other place to which he may lawfully be committed pending trial either without bail or until he finds sufficient bail to appear at such adjourned diet and at all future diets of the case, and the amount of such bail shall be fixed in the minute of adjournment; or

(*e*) the court may in any case where it shall judge it expedient, and whether or not the accused is in custody, instead of fixing bail as aforesaid, appoint the accused to attend at such adjourned diet under a penalty, not exceeding £10, in case he shall fail to appear;

(*f*) the court may from time to time, and at any stage of the case, on the motion of either party or ex proprio motu grant such adjournment as may be necessary for the proper conduct of the case, and where from any cause a diet has to be continued from day to day it shall not be necessary to intimate such continuation to the accused;

(*g*) it shall not be necessary for the prosecutor to establish a charge or part of a charge to which the accused pleads guilty;

(*h*) the court may, in any case where it considers such a course expedient, permit any witness for the defence to be examined prior to evidence for the prosecution having been led or concluded, but in any such case the accused shall be entitled to lead additional evidence after the case for the prosecution is closed.

Failure of accused to appear.

338. Where the accused in a summary prosecution fails to appear at any diet of which he has received intimation, or to which he has been cited, the following provisions shall apply:—

PART II

(*a*) the court may adjourn the trial to another diet, and order the accused to attend at such diet, and appoint intimation thereof to be made to him, which intimation shall be sufficiently given by an officer of law, or by letter signed by the prosecutor and sent to the accused at his last known address by registered post or by the recorded delivery service, and the production in court of the written execution of such officer or of an acknowledgment or certificate of the delivery of the letter issued by the Post Office shall be sufficient evidence of such intimation having been duly given;

(*b*) where the accused is charged with any statutory offence for which a sentence of imprisonment cannot be imposed in the first instance, or where the statute founded on or conferring jurisdiction authorises procedure in the absence of the accused, the court may, on the motion of the prosecutor and upon proof that the accused has been duly cited, or has received due intimation of the diet where such intimation has been ordered, proceed to hear and dispose of the case in the absence of the accused. Unless the statute founded on authorises conviction in default of appearance, proof of the complaint must be led to the satisfaction of the court. The court in any case to which this paragraph applies may, if it shall judge it expedient, allow any solicitor who satisfies the court that he has authority from the accused so to do, to appear and plead for and defend him;

(*c*) the court may grant warrant to apprehend the accused;

(*d*) the court may, on the motion of the prosecutor, forfeit any bail deposited or found for the appearance of the accused or, where the accused has been ordered to attend under a penalty, may declare such penalty to be forfeited, and such bail or penalty may, where necessary, be recovered in the manner provided in section 303 of this Act, and in addition to such forfeiture the court may grant warrant to apprehend the accused.

Alibi.

339. It shall not be competent for the accused in a summary prosecution to found on a plea of alibi unless he gives, prior to the examination of the first witness for the prosecution, notice to the prosecutor of the plea with particulars as to time and place and of the witnesses by whom it is proposed to prove it. The prosecutor, on such notice being given, shall be entitled, if he so desires, to an adjournment of the case.

PART II
Examination of witness.

340. In any trial, it shall be competent for the party against whom a witness is produced and sworn in causa to examine such witness, not in cross only, but also in causa.

Witnesses not to be excluded by reason of conviction, interest, etc.

341.—(1) No person adduced as a witness shall be excluded from giving evidence by reason of having been convicted of or having suffered punishment for crime, or by reason of interest, or by reason of agency or of partial counsel, or by reason of having appeared without citation or without having been duly cited to attend, or by reason of having been precognosced subsequently to the date of citation.

(2) Every person so adduced, who is not otherwise by law disqualified from giving evidence, shall be admissible as a witness, notwithstanding any objection offered on any of the above-mentioned grounds.

(3) Nothing in this section shall prevent such witness from being examined on any point tending to affect his credibility.

(4) Where any person who is or has been an agent of the accused shall be adduced and examined as a witness for the accused, it shall not be competent to the accused to object, on the ground of confidentiality, to any question proposed to be put to such witness on matter pertinent to the issue of the guilt of the accused.

Witnesses admissible notwithstanding relationship to parties.

342. It shall be no objection to the admissibility of any witness that he or she is the father, mother, son, daughter, brother or sister, by consanguinity or affinity, or uncle, aunt, nephew or niece, by consanguinity, of any party adducing such witness in any trial; nor shall it be competent to any witness to decline to be examined and give evidence on the ground of any such relationship.

Presence in court not to disqualify witnesses in certain cases.

343. In any trial, the court need not reject any witness against whom it is objected that he has, without the permission of the court, and without the consent of the party objecting, been present in court during the proceedings; but the court may, in its discretion, admit the witness, where it appears to the court that the presence of the witness was not the result of culpable negligence or criminal intent, and that the witness has not been unduly instructed or influenced by what took place during his presence, or that injustice will not be done by his examination.

PART II

Punishment of witness for contempt.

344.—(1) If a witness in a summary prosecution shall wilfully fail to attend after being duly cited, or unlawfully refuse to be sworn, or after the oath has been administered to him refuse to answer any question which the court may allow, or to produce documents in his possession when required by the court, or shall prevaricate in his evidence, he shall be deemed guilty of contempt of court and be liable to be summarily punished forthwith for such contempt by a fine not exceeding £25 or by imprisonment for any period not exceeding 20 days.

(2) Where such punishment as aforesaid is summarily imposed, the clerk of court shall enter in the record of the proceedings the acts constituting the contempt or the statements forming the prevarication.

(3) The foregoing provisions of this section shall be without prejudice to the prosecutor proceeding by way of formal complaint for any such contempt where such summary punishment, as above mentioned, is not imposed.

(4) Any witness who, after being duly cited in accordance with section 315 of this Act—

(*a*) fails without reasonable excuse, after receiving at least 24 hours' notice, to attend for precognition by a prosecutor at the time and place mentioned in the citation served on him, or

(*b*) refuses when so cited to give information within his knowledge regarding any matter relative to the commission of the offence in relation to which such precognition is taken,

shall be liable to the like punishment as is provided in the foregoing provisions of this section.

Administration of oath to same witness in case at same diet.

345. Where a witness in a summary prosecution is examined on oath in a case in which the accused is charged with an offence under any statute, and where the same witness is examined at the same diet in subsequent cause against the same or different persons accused of offences under the same statute, it shall not be necessary for the judge to administer the oath to the witness in the subsequent cases, but it shall be sufficient that the judge shall remind him in each case that he is still on oath.

Accused and spouse competent witnesses for defence.

346. The accused and the spouse of the accused shall be competent witnesses for the defence at every stage of the case, whether the accused is on trial alone or along with a co-accused:

Provided that—

(*a*) the accused shall not be called as a witness in pursuance of this section except upon his own application;

(*b*) the failure of the accused or the spouse of the accused to give evidence shall not be commented upon by the prosecution;

(*c*) the spouse of the accused shall not, save as mentioned in section 348 of this Act, be called as a witness in pursuance of this section except upon the application of the accused;

(*d*) nothing in this section or in section 348 of this Act shall compel a spouse to disclose any communication made to him or her by the other spouse during the marriage;

(*e*) the accused who gives evidence on his own behalf in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged;

(*f*) the accused who gives evidence on his own behalf in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless—

(i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged; or

(ii) the accused or his counsel or solicitor has asked questions of the witnesses for the prosecution with a view to establish the accused's good character, or the accused has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of of the prosecutor or of the witnesses for the prosecution; or

(iii) the accused has given evidence against any other person charged with the same offence;

(*g*) every person called as a witness in pursuance of this section or section 348 of this Act shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

347. Where the only witness to the facts of the case called by the defence is the accused, he shall be called as a witness immediately after the close of the evidence for the prosecution. Evidence of accused.

PART II

Spouse as witness in certain cases.

348.—(1) The spouse of a person charged with—

(*a*) bigamy,

(*b*) any offence mentioned in Schedule 1 to this Act, or

(*c*) any offence under any enactment mentioned in Schedule 4 to this Act,

may be called as a witness either for the prosecution or for the defence without the consent of the person charged.

(2) Nothing in this section or in section 141 or section 346 of this Act shall affect a case where the spouse of a person charged with an offence may at common law be called as a witness without the consent of that person.

Witness may be examined etc., as to having previously made a different statement.

349. In any trial, any witness may be examined as to whether he has on any specified occasion made a statement on any matter pertinent to the issue at the trial different from the evidence given by him in such trial; and in such trial evidence may be led to prove that such witness has made such different statement on the occasion specified.

Witness may be recalled.

350. In any trial, on the motion of either party, the presiding judge may permit a witness who has been examined to be recalled.

Defence to speak last.

351. In any trial, the accused or, where he is legally represented, his counsel or solicitor shall have the right to speak last.

Declaration of accused.

352. The declaration of the accused, the formal parts of which may be written or printed, or partly written and partly printed, duly authenticated by a justice as having been emitted before him according to the existing law and practice, shall be received in evidence without being sworn to by witnesses, either for the prosecution or for the accused, but it shall be competent for the accused, before such declaration is read to the court, to adduce as witnesses the persons who were present when the declaration was emitted, and to examine them upon any matters regarding such declaration on which it would be competent to examine them according to the existing law and practice, and to move the court to refuse to allow the declaration to be read on grounds appearing on the face of the declaration itself, or on the ground of what is disclosed in such evidence or on both of those grounds, and where the accused objects to the declaration, the prosecutor shall be entitled to examine any witnesses in regard thereto whom the accused may be entitled to examine as aforesaid.

PART II

Proof of official documents.

353.—(1) Any letter, minute or other official document issuing from the office or in the custody of any of the departments of state or government in the United Kingdom the production of which in evidence is required in any summary prosecution, and which according to the rules and regulations applicable to such departments may be competently produced, shall when produced be received as prima facie evidence of the matters contained in it without being produced or sworn to by any witness, and a copy thereof bearing to be certified by any person having authority to certify the same shall be treated as equivalent to the original, and no proof of the signature of the person certifying such copy, or of his authority to certify it, shall be necessary.

(2) Any order by any of the departments of state or government or any local authority or public body made under powers conferred by any statute, or a print or copy of such order, shall when produced in a summary prosecution be received in evidence of the due making, confirmation, and existence of such order without being sworn to by any witness and without any further or other proof, but without prejudice to any right competent to the accused to challenge any such order as being ultra vires of the authority making it or on any other competent ground, and where any such order is referred to in the complaint it shall not be necessary to enter it in the record of the proceedings as a documentary production.

(3) The provisions contained in this section shall be deemed to be in addition to, and not in derogation of, any powers of proving documents conferred by statute, or existing at common law.

Admissions by parties.

354.—(1) It shall not be necessary in any summary prosecution for either party to lead proof of any fact which is admitted by the opposite party, or to prove any documents the terms and application of which are not in dispute, and copies of any documents may, by agreement of the parties, be accepted as equivalent to the originals:

Provided that this subsection shall not apply unless the accused has legal assistance in his defence.

(2) Admissions or agreements under the foregoing subsection may be made by lodging with the clerk of court a minute signed by the person or persons making the same or by his or their counsel or solicitor, and any facts and documents so admitted or agreed shall be accepted as if they had been duly proved.

Judges equally divided.

355. In a summary prosecution in a court consisting of more than one judge, if the judges are equally divided in opinion as to the guilt of the accused, the accused shall be found not guilty

PART II

of the charge or part thereof on which such division of opinion exists.

Previous convictions.

356.—(1) A previous conviction may not be libelled as an aggravation of an offence.

(2) Where a person is convicted of an offence, the court may have regard to any previous conviction in respect of that person in deciding on the disposal of the case.

(3) Nothing in this section shall affect the sentence which a court may pass on a second or subsequent conviction.

Laying of previous convictions before court.

357.—(1) Where the accused in a summary prosecution has been previously convicted of any offence and the prosecutor has decided to lay a previous conviction before the court, the following provisions shall have effect:—

1954 c. 48.

(*a*) a notice in the form, as nearly as may be, of Form No. 2 or 3 of Part III of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or of the appropriate form in an Act of Adjournal under this Act setting forth the previous conviction shall be served on the accused with the complaint where he is cited to a diet, and where he is in custody the complaint and such a notice shall be served on him before he is asked to plead;

(*b*) the previous conviction shall not be laid before the judge until he is satisfied that the charge is proved;

(*c*) if a plea of guilty is tendered or if, after a plea of not guilty, the accused is convicted the prosecutor shall lay the notice referred to in paragraph (*a*) of this subsection before the judge, and the judge or the clerk of court shall ask the accused whether he admits the previous conviction, and if such admission is made it shall be entered in the record of the proceedings;

(*d*) it shall not be necessary for the prosecutor to produce extracts of any previous convictions so admitted;

(*e*) where the accused does not admit any such previous conviction, the prosecutor unless he withdraws the conviction shall adduce evidence in proof thereof either then or at any other diet;

(*f*) a copy of any notice served on the accused under this subsection shall be entered in the record of the proceedings.

(2) A conviction, or an extract conviction of any offence committed in any part of the United Kingdom, bearing to be under

the hand of the officer in use to give out such extract conviction, shall be received in evidence without being sworn to by witnesses. An official of any prison in which the accused may have been confined on such conviction shall be a competent and sufficient witness to prove the application thereof to the accused, although such official may not have been present in court at the trial to which such conviction relates. This provision shall be without prejudice to any other competent mode of proving a conviction and the application thereof to the accused.

(3) Where in any court a book of record is kept of the convictions in the court containing the like particulars as are inserted in an extract conviction, and where at the end of each day's proceedings the entries in such book are certified as correct by the judge or clerk of court, such entries shall, in any proceeding in that court, be accepted as evidence of such convictions.

(4) Where the accused in a summary prosecution is convicted of any offence and also of any aggravation by previous conviction, and is again accused of any offence in regard to which such conviction may be competently used as an aggravation, the production of the prior conviction, or an extract thereof, setting forth the particulars of the previous convictions therein libelled, shall be admissible and sufficient evidence to prove against the accused all the previous convictions and aggravations therein set forth.

(5) Nothing in this section shall prevent evidence of previous convictions being led in causa where such evidence is competent in support of a substantive charge.

Proof of previous convictions by fingerprints.

358.—(1) A previous conviction may be proved against any person in any criminal proceedings by the production of such evidence of the conviction as is mentioned in this section and by showing that his fingerprints and those of the person convicted are the fingerprints of the same person.

(2) A certificate purporting to be signed by or on behalf of the Chief Constable of Strathclyde or the Commissioner of Police of the Metropolis, containing particulars relating to a conviction extracted from the criminal records kept by the person by or on whose behalf the certificate is signed, and certifying that the copies of the fingerprints contained in the certificate are copies of the fingerprints appearing from the said records to have been taken in pursuance of regulations for the time being in force under section 11 of the Prisons (Scotland) Act 1952, or under section 16 of the Prison Act 1952, from the person convicted on the occasion of the conviction or on the occasion of his last

1952 c. 61.
1952 c. 52.

PART II

conviction, shall be sufficient evidence of the conviction or, as the case may be, of his last conviction and of all preceding convictions and that the copies of the fingerprints produced on the certificate are copies of the fingerprints of the person convicted.

(3) Where a person has been apprehended and detained in the custody of the police in connection with any criminal proceedings, a certificate purporting to be signed by the chief constable concerned or a person authorised on his behalf, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.

(4) A certificate purporting to be signed by or on behalf of the governor of a prison or of a remand centre in which any person has been detained in connection with any criminal proceedings, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.

(5) A certificate purporting to be signed by or on behalf of the Chief Constable of Strathclyde, and certifying that the fingerprints, copies of which are certified as aforesaid by or on behalf of the Chief Constable or the Commissioner of Police of the Metropolis to be copies of the fingerprints of a person previously convicted and the fingerprints certified by or on behalf of a chief constable or a governor as aforesaid, or otherwise shown, to be the fingerprints of the person against whom the previous conviction is sought to be proved, are the fingerprints of the same person, shall be sufficient evidence of the matter so certified.

(6) The method of proving a previous conviction authorised by this section shall be in addition to any other method of proving the conviction.

Record.

359. Proceedings in a summary prosecution shall be conducted summarily viva voce and, except where otherwise provided, no record need be kept of the proceedings other than the complaint, the plea, a note of any documentary evidence produced, and the conviction and sentence or other finding of the court:

Provided that any objections taken to the competency or relevancy of the complaint or proceedings, or to the competency or admissibility of evidence, shall, if either party desires it, be entered in the record of the proceedings.

Proceedings written or printed.

360. Proceedings in a summary prosecution may be either in writing or printed, or may be partly written and partly printed,

and all forms bearing reference to any antecedent form may be either on the same sheet of paper therewith or on a separate sheet attached to it. PART II

Procedure at trial involving children

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

361. 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.

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

362.—(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 members or officers of the court or parties to the case, their counsel or solicitors, or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of that witness:

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.

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

363. 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.

Power of court, in respect of certain offences against a child, to refer child to reporter.

364. Any court by or before which a person is convicted of having committed in respect of a child any of the offences mentioned in Schedule 1 to this Act or any offence under section 21 of the Children and Young Persons (Scotland) Act 1937 may refer the child to the 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 Social Work (Scotland) Act 1968. 1937 c. 37.

1968 c. 49.

PART II

Power to prohibit publication of certain matter.

365.—(1) In relation to any proceedings in any court, the court may direct that—

(*a*) no newspaper report of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any person under the age of 17 years concerned in the proceedings, either as being the person by or against or in respect of whom the proceedings are taken, or as being a witness therein;

(*b*) no picture shall be published in any newspaper as being or including a picture of any person under the age of 17 years so concerned in the proceedings;

except in so far (if at all) as may be permitted by the direction of the court.

(2) Any person who publishes any matter in contravention of any such direction shall on summary conviction be liable in respect of each offence to a fine not exceeding £50.

(3) This section shall, with the necessary modifications, apply in relation to sound and television broadcasts as it applies in relation to newspapers.

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

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

366.—(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 newspapers or news agencies;

(*d*) such other persons as the court may specially authorise to be present.

(2) The power to make rules conferred on the High Court under section 457 of this Act shall include power to make rules as respects the procedure in cases to which the foregoing subsection applies.

PART II

Powers of sheriff sitting summarily.

367.—(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 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.

Presumption and determination of age of child.

1937 c. 37.

368.—(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 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 Children and Young Persons (Scotland) Act 1937 be deemed not to be a child.

PART II

(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 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.

1968 c. 49.

(3) Where in any complaint in respect of any offence under the Children and Young Persons (Scotland) Act 1937 or any of the offences mentioned in Schedule 1 to this Act, except an offence under the Criminal Law Amendment Act 1885, 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 Children and Young Persons (Scotland) Act 1937 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.

1885 c. 69.

1937 c. 37.

(4) Where, in any complaint in respect of any offence under the 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 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.

(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.

Age of criminal responsibility.

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

PART II

Child charged jointly with person who is not a child.

370. When a child has been charged with an offence jointly with a person who is not a child the provisions of sections 366, 367 and 374 of this Act shall not apply to summary proceedings before the sheriff in respect of the charges.

Welfare of child.

371. 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.

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

372.—(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 reporter of the local authority to arrange for the disposal of the case by a children's hearing; or

(*b*) on that plea or finding may request the reporter of the local authority 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 reporter of the local authority 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 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.

PART II

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

373. 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 reporter of the local authority 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 reporter of the local authority for the disposal of the case by a children's hearing.

Restrictions on report of proceedings involving child.

374.—(1) Subject as hereinafter provided, no newspaper report of any summary proceedings in the sheriff court in respect of an offence by a child shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of a person under the age of 17 years concerned in those proceedings, either as being the person against or in respect of whom the proceedings are taken or as being a witness therein, nor shall any picture be published in any newspaper as being or including a picture of a person under the age of 17 years so concerned in any such proceedings as aforesaid:

Provided that the court or the Secretary of State may in any case, if satisfied that it is in the interests of justice so to do, by order dispense with the requirements of this section 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 broadcasts as it applies in relation to newspapers.

(3) This section shall, with the necessary modifications, apply in relation to any proceedings on appeal from a sheriff sitting summarily in respect of an offence by a child (including an appeal by stated case) as it applies in relation to the proceedings before the sheriff.

(4) Any person who publishes any matter in contravention of this section shall on summary conviction be liable in respect of each offence to a fine not exceeding £50.

Procedure at Trial of Persons suffering from Mental Disorder

Insanity in bar of trial.

375.—(1) Subject to the following provisions of this section, any rule of law relating to insanity standing in bar of trial shall apply in the case of a person charged summarily in the sheriff court as it would apply if that person were charged on indictment.

(2) Where, in the case of any person charged summarily in the sheriff court, the court is satisfied that the person is insane so that the trial of that person cannot proceed, the court shall

direct a finding to that effect, and the reasons for that finding, to be recorded, and shall deal with him in the manner provided by section 376(2) of this Act.

(3) It shall not be competent for a person charged as aforesaid to found on a plea of insanity standing in bar of trial unless, before the first witness for the prosecution is called, he gives notice to the prosecutor of the plea and of the witnesses by whom he proposes to maintain it; and where notice as aforesaid has been given, the court shall, if the prosecutor so moves, adjourn the case.

(4) Where it appears to a court that it is not practicable or appropriate for the accused to be brought before it for the purpose of determining whether he is insane so that his trial cannot proceed, then, if no objection to such a course is taken by or on behalf of the accused, the court may order that the case be proceeded with in his absence.

Power of court to order hospital admission or guardianship.

376.—(1) Where a person is convicted in the sheriff court of an offence, other than an offence the sentence for which is fixed by law, punishable by that court with imprisonment, and the following conditions are satisfied, that is to say—

(*a*) the court is satisfied, on the written or oral evidence of two medical practitioners (complying with the provisions of section 377 of this Act) that the offender is suffering from mental disorder of a nature or degree which, in the case of a person under 21 years of age, would warrant his admission to a hospital or his reception into guardianship under Part IV of the Mental Health (Scotland) Act 1960; and 1960 c. 61.

(*b*) the court is of opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section,

the court may by order authorise his admission to and detention in such hospital as may be specified in the order or, as the case may be, place him under the guardianship of such local authority or of such other person approved by a local authority as may be so specified.

(2) Where a person is charged summarily in the sheriff court with an act or omission as an offence and a finding has been recorded in respect of that person under section 375(2) of this Act, the court shall make such an order for his admission to and detention in a hospital as may be made under the foregoing subsection.

PART II

(3) Where in the case of a person charged as aforesaid the court would have power, on convicting him, to make an order under subsection (1) of this section, then, if it is satisfied that the person did the act or made the omission charged, the court may, if it thinks fit, make such an order without convicting him.

(4) Where a person is charged before a court of summary jurisdiction, other than a sheriff court, with any act or omission constituting an offence punishable with imprisonment, the court, if it appears to it that that person may be suffering from mental disorder, shall remit him to the sheriff court in the manner provided by section 286 of this Act, and the sheriff court shall, on any such remit being made, have the like power to make an order under subsection (1) of this section in respect of him as if he had been charged before that court with the said act or omission as an offence, or in dealing with him may exercise the like powers as the court making the remit.

(5) Where it appears to the prosecutor in any court before which a person is charged with an offence that the person may be suffering from mental disorder, it shall be the duty of such prosecutor to bring before the court such evidence as may be available of the mental condition of that person.

(6) An order for the admission of a person to a hospital (in this Act referred to as " a hospital order ") shall not be made under this section in respect of an offender or of a person to whom subsection (3) of this section applies unless the court is satisfied that that hospital, in the event of such an order being made by the court, is available for his admission thereto within 28 days of the making of such an order.

(7) A State hospital shall not be specified in a hospital order in respect of the detention of a person unless the court is satisfied, on the evidence of the medical practitioners which is taken into account under paragraph (*a*) of subsection (1) of this section, that the offender, on account of his dangerous, violent or criminal propensities, requires treatment under conditions of special security, and cannot suitably be cared for in a hospital other than a State hospital.

(8) An order placing a person under the guardianship of a local authority or of any other person (in this Act referred to as " a guardianship order ") shall not be made under this section unless the court is satisfied that that authority or person is willing to receive that person into guardianship.

(9) A hospital order or guardianship order shall specify the form of mental disorder, being mental illness or mental deficiency or both, from which, upon the evidence taken into account under paragraph (*a*) of subsection (1) of this section, the offender is found by the court to be suffering; and no such

order shall be made unless the offender is described by each of the practitioners, whose evidence is taken into account as aforesaid, as suffering from the same form of mental disorder, whether or not he is also described by either of them as suffering from the other form.

(10) Where an order is made under this section, the court shall not pass sentence of imprisonment or impose a fine or make a probation order in respect of the offence, but may make any other order which the court has power to make apart from this section; and for the purposes of this subsection " sentence of imprisonment " includes any sentence or order for detention.

Requirements as to medical evidence.

1960 c. 61.

377.—(1) Of the medical practitioners whose evidence is taken into account under section 376(1)(*a*) of this Act, at least one shall be a practitioner approved for the purposes of section 27 of the Mental Health (Scotland) Act 1960 by a Health Board as having special experience in the diagnosis or treatment of mental disorder.

(2) For the purposes of the said section 376(1)(*a*) a report in writing purporting to be signed by a medical practitioner may, subject to the provisions of this section, be received in evidence without proof of the signature or qualifications of the practitioner; but the court may, in any case, require that the practitioner by whom such a report was signed be called to give oral evidence.

(3) Where any such report as aforesaid is tendered in evidence, otherwise than by or on behalf of the accused, then—

(*a*) if the accused is represented by counsel or solicitor, a copy of the report shall be given to his counsel or solicitor;

(*b*) if the accused is not so represented, the substance of the report shall be disclosed to the accused or, where he is a child under 16 years of age, to his parent or guardian if present in court;

(*c*) in any case, the accused may require that the practitioner by whom the report was signed be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by or on behalf of the accused;

and where the court is of opinion that further time is necessary in the interests of the accused for consideration of that report, or the substance of any such report, it shall adjourn the case.

(4) For the purpose of calling evidence to rebut the evidence contained in any such report as aforesaid, arrangements may

PART II

be made by or on behalf of an accused person detained in a hospital for his examination by any medical practitioner, and any such examination may be made in private.

Supplementary provisions as to hospital orders.

378. The court by which a hospital order is made may give such directions as it thinks fit for the conveyance of the patient to a place of safety and his detention therein pending his admission to the hospital within the period of 28 days referred to in section 376(6) of this Act; but a direction for the conveyance of a patient to a residential establishment provided by a local authority under Part IV of the Social Work (Scotland) Act 1968 shall not be given unless the court is satisfied that that authority is willing to receive the patient therein.

1968 c. 49.

Power of court to restrict discharge from hospital.

379.—(1) Where a hospital order is made in respect of a person, and it appears to the court, having regard to the nature of the offence with which he is charged, the antecedents of the person and the risk that as a result of his mental disorder he would commit offences if set at large, that it is necessary for the protection of the public so to do, the court may, subject to the provisions of this section, further order that the person shall be subject to the special restrictions set out in section 60(3) of the Mental Health (Scotland) Act 1960, either without limit of time or during such period as may be specified in the order.

1960 c. 61.

(2) An order under this section (in this Act referred to as "an order restricting discharge") shall not be made in the case of any person unless the medical practitioner approved by the Health Board for the purposes of section 27 of the Mental Health (Scotland) Act 1960, whose evidence is taken into account by the court under section 376(1)(*a*) of this Act, has given evidence orally before the court.

(3) Where an order restricting the discharge of a patient is in force, a guardianship order shall not be made in respect of him; and where the hospital order relating to him ceases to have effect by virtue of section 58(4) of the Mental Health (Scotland) Act 1960 on the making of another hospital order, that order shall have the same effect in relation to the order restricting discharge as the previous hospital order, but without prejudice to the power of the court making that other hospital order to make another order restricting discharge to have effect on the expiration of the previous such order.

Adjournment and remand

Power of court to adjourn case before sentence.

380. 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:

Provided that a court shall not for the purpose aforesaid adjourn the hearing of a case for any single period exceeding three weeks.

Remand for inquiry into physical or mental condition.

381.—(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 shall remand him in custody or on bail 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.

(2) Where a person is remanded on bail under this section, bail shall be found by bail bond, and it shall be a condition of the bond 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 bond so specifies, two such practitioners; and

(*b*) for the purpose attend at an institution or place, or on any such practitioner specified in the bond 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 bond 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) Where a person remanded on bail under this section fails to comply with any such condition of the bond as is mentioned in the last foregoing subsection, the bail may be forfeited.

PART II

(4) On exercising the powers conferred by this section 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.

Admonition and discharge

Admonition.

382. A court of summary jurisdiction may, if it appears to meet the justice of the case, dismiss with an admonition any person found guilty by the court of any offence.

Absolute discharge.

383. Where a person is charged before a court of summary jurisdiction with an offence (other than an offence the sentence for which is fixed by law) and the court is satisfied that he committed the offence, 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, without proceeding to conviction, make an order discharging him absolutely.

Probation

Probation.

384.—(1) Where a person is charged before a court of summary jurisdiction with an offence (other than an offence the sentence for which is fixed by law) and the court is satisfied that he committed the offence, 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 expedient to do so, may, without proceeding to conviction, 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 one nor more than three years.

(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 necessary for securing the good conduct of the offender or for preventing a repetition by him of the offence or the commission of other offences.

(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—

(*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.

(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) or (5) 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 convicted of and 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 cause copies thereof to be given to the officer of the local authority who is to supervise the probationer, to the probationer, and to the person in charge of any institution or place in which the probationer is required to reside under the probation order.

PART II
Probation orders requiring treatment for mental condition.
1960 c. 61.

385.—(1) Where the court is satisfied, on the evidence of a registered medical practitioner approved for the purposes of section 27 of the Mental Health (Scotland) Act 1960, 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 Part V 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 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 Mental Health (Scotland) Act 1960, not being a State hospital within the meaning of that Act;

(*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 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) While the probationer is under treatment as a resident patient in pursuance of a requirement of the probation order, any officer responsible for his supervision shall carry out the supervision to such extent only as may be necessary for the purpose of the discharge or amendment of the order.

(5) Where the medical practitioner by whom or under whose direction a probationer is being treated for his mental condition in pursuance of a probation order is of opinion that part of the treatment can be better or more conveniently given in or at an institution or place not specified in the order, being an institution or place in or at which the treatment of the probationer will be given by or under the direction of a registered medical practitioner, he may, with the consent of the probationer, make arrangements for him to be treated accordingly; and the arrangements may provide for the probationer to receive part of his

treatment as a resident patient in an institution or place notwithstanding that the institution or place is not one which could have been specified in that behalf in the probation order.

(6) Where any such arrangements as are mentioned in the last foregoing subsection are made for the treatment of a probationer—

(*a*) the medical practitioner by whom the arrangements are made shall give notice in writing to any officer responsible for the supervision of the probationer, specifying the institution or place in or at which the treatment is to be carried out; 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 377 of this Act shall apply for the purposes of this section as if for the reference in the said subsection (2) to section 376(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.

Discharge and amendment of probation orders.

386.—(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 387 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.

Failure to comply with requirement of probation order.

387.—(1) If, on information on oath from the officer supervising the probationer, 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 foregoing subsection that he has failed to comply with any of the requirements of the probation order, the court may—

(*a*) without prejudice to the continuance in force of the probation order, impose a fine not exceeding £20; or

PART II

(*b*) (i) where the probationer has been convicted for the offence for which the order was made, sentence him for that offence;

(ii) where the probationer has not been so convicted, convict him and sentence him as aforesaid; or

(*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.

(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 of 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 388 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.

Commission of further offence.

388.—(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 such 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 387(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 387(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.

PART II
Probation orders relating to persons residing in England.

389.—(1) Where the court by which a probation order is made under section 384 of this Act is satisfied that the offender has attained the age of 17 years 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; and that area shall be named in the order.

(2) Where a probation order has been made under section 384 of this Act and the court in Scotland by which the order was made or the appropriate court is satisfied that the probationer has attained the age of 17 years and proposes to reside or is residing in England, 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; 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 385(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 385 and section 3(2) of the 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 385 of this Act and section 3 of the said Act of 1973 respectively; and 1973 c. 62.

(*b*) subsections (4) to (6) of section 3 of 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 386(1) and 387(1) of this Act shall not apply to any order made or amended under this section; but subject as hereinafter provided the provisions of the Powers of Criminal Courts Act 1973 (except section 8 of that Act) shall apply to the order as if it were a probation order made under section 2 of that Act:

Provided that section 6(2)(*a*), (3)(*d*) and (6) of that Act shall not apply to any such order and section 6(4) and (5) of that Act

PART II

shall have effect respectively in relation to any such order as if for the first reference in section 6(4) to the Crown Court there were substituted a reference to a court in Scotland and as if for the second such reference therein and for both such references in section 6(5) there were substituted references to the court in Scotland by which the probation order was made or amended under this section.

(5) If it appears on information to a justice acting for the petty sessions area for which the supervising court within the meaning of the Powers of Criminal Courts Act 1973 acts that a person in whose case a probation order has been made or amended under this section 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.

1973 c. 62.

(6) If a warrant for the arrest of a probationer issued under section 388 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 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.

Further provisions as to probation orders.

390.—(1) Where the court by which a probation order is made under section 384 of this Act or subsection (6) of this section is satisfied that the person to whom the order relates is under the age of 17 years and resides or will reside in England, subsection (2) of the said section 384 shall not apply to the

order but the order shall name the petty sessions area in which that person resides or will reside and the court shall send notification of the order to the clerk to the justices for that area.

(2) Where a probation order has been made under section 384 of this Act or subsection (6) of this section, and the court which made the order or the appropriate court is satisfied that the person to whom the order relates is under the age of 17 years and proposes to reside or is residing in England, the power of that court to amend the order under Schedule 5 to this Act shall include power, without summoning him and without his consent, to insert in the order the name of the petty sessions area aforesaid; and where the court exercises the power conferred on it by virtue of this subsection it shall send notification of the order to the clerk aforesaid.

(3) A court which sends a notification to a clerk in pursuance of the foregoing provisions of this section shall send to him with it three copies of the probation order in question and such other documents and information relating to the case as it considers likely to be of assistance to the juvenile court mentioned in the following subsection.

(4) It shall be the duty of the clerk to whom a notification is sent in pursuance of the foregoing provisions of this section to refer the notification to a juvenile court acting for the petty sessions area named in the order, and on such a reference the court—

(*a*) may make a supervision order under the Children and Young Persons Act 1969 in respect of a person to whom the notification relates; and 1969 c. 54.

(*b*) if it does not make such an order, shall dismiss the case.

(5) A supervision order made by virtue of the last foregoing subsection shall not include a requirement authorised by section 12 of the said Act of 1969 unless the supervised person is before the court when the supervision order is made, and in relation to a supervision order made by virtue of that subsection—

(*a*) section 15 of that Act shall have effect as if, in subsection (4), paragraph (*b*) and the words following it were omitted; and

(*b*) section 17(*a*) of that Act shall have effect as if the second reference to the supervision order were a reference to the probation order in consequence of which the supervision order is made;

and when a juvenile court disposes of a case referred to it in pursuance of the last foregoing subsection, the probation

PART II

order in consequence of which the reference was made shall cease to have effect.

1968 c. 49.

(6) The court which, in pursuance of subsection (1) of section 73 of the Social Work (Scotland) Act 1968, considers a case referred to it in consequence of a notification under paragraph (*b*) of that subsection (which relates to a case in which a person subject to a supervision order made by virtue of this section moves to Scotland)—

(*a*) may, if it is of opinion that the person to whom the notification relates should continue to be under supervision, make a probation order in respect of him for a period specified in the order; and

(*b*) if it does not make such an order, shall dismiss the case;

and when the court disposes of a case in pursuance of this subsection the supervision order aforesaid shall cease to have effect.

(7) Notwithstanding any provision to the contrary in section 384 of this Act, a probation order made by virtue of the last foregoing subsection which includes only requirements having the like effect as any requirement or provision of the supervision order to which the notification relates may be made without summoning the person to whom the notification relates and without his consent, and shall specify a period of supervision which shall expire not later than the date on which that supervision order would have ceased to have effect by the effluxion of time; and, except as aforesaid, the provisions of this Act shall apply to that probation order.

(8) In this and the last foregoing section, "petty sessions area" has the same meaning as in the said Act of 1969.

Supplementary provisions as to probation.

391.—(1) Any court, on making a probation order, may, if it thinks that such a course is expedient for the purpose of the order, require the offender to give security for his good behaviour.

(2) Security may be given under the foregoing subsection by consignation with the clerk of the court or by entering into an undertaking to pay the amount, but not otherwise, and such security may be forfeited and recovered in like manner as caution.

Effects of probation and absolute discharge.

392.—(1) Subject as hereinafter provided, a conviction on indictment of an offence for which an order is made under Part I of this Act 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—

(*a*) any right of any such offender as aforesaid to appeal against his conviction; or

(*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 Criminal Justice (Scotland) Act 1949 and is expressed to extend to persons dealt with under section 1(1) of the Probation of Offenders Act 1907 as well as to convicted persons. 1949 c. 94. 1907 c. 17.

(4) Where an offender is placed on probation or discharged absolutely by a court of summary jurisdiction, he shall have the like right of appeal against the finding that he committed the offence as if that finding were a conviction.

(5) Where a person charged with an offence has at any time previously been placed on probation or 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 probation order or order of absolute discharge in like manner as if the order were a conviction.

Probation reports.

393. Where a report by an officer of a local authority is made to any court (other than a court whose procedure is regulated by rules made under section 366(2) of this Act) 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:

Provided that if the offender is under 16 years of age and is not represented by counsel or a solicitor, a copy of the report need not be given to him but shall be given to his parent or guardian if present in court.

PART II

Penalties for Statutory Offences

Power to mitigate penalties.

394. In a summary prosecution for the contravention of any statute or order, where such 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.:—

(*a*) to reduce the period of imprisonment:

(*b*) to substitute a fine not exceeding £100 for imprisonment (either with or without caution for good behaviour, not exceeding the amount and the period competent under this Part of this Act):

(*c*) to substitute the finding of caution as provided for in this Part of this Act for a fine or imprisonment:

(*d*) to reduce the amount of any fine:

(*e*) 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.

Fines

Provisions as to fines.

395.—(1) A court of summary jurisdiction in determining the amount of any fine to be imposed on an offender shall take into consideration, amongst other things, the means of the offender so far as known to the court.

(2) Where a court of summary jurisdiction imposes a fine on an offender, the court may order him to be searched, and any money found on him on apprehension or when so searched or when taken to prison or to a detention centre in default of payment of the fine, may, unless the court otherwise directs, be applied towards payment of the fine, and the surplus if any shall be returned to him:

Provided that the money shall not be so applied if the court is satisfied that it does not belong to the person on whom it was found or that the loss of the money will be more injurious to his family than his imprisonment or detention.

(3) When a court of summary jurisdiction, which has adjudged that a sum of money shall be paid by an offender, shall consider that any money found on the offender on apprehension, or after he has been searched by order of the court, should not be applied towards payment of such sum, the court shall make a direction in writing to that effect which shall be written on the extract of the sentence which imposes the fine before the same is issued by the clerk of the court.

(4) An accused may make an application to such a court either orally or in writing, through the governor of the prison in whose custody he may be at the time, that any sum of money which shall have been found on his person should not be applied in payment of the fine adjudged to be paid by him.

(5) A person who alleges that any money found on the person of an offender is not the property of the offender, but belongs to such person, may apply to such court either orally or in writing for a direction that such money should not be applied in payment of the fine adjudged to be paid, and the court after enquiry may so direct.

(6) A court of summary jurisdiction, which has adjudged that a sum of money shall be paid by an offender, may order the attendance in court of the offender, if he is in prison, for the purpose of ascertaining the ownership of money which shall have been found on his person.

(7) A notice in the form, as nearly as may be, of the appropriate form contained in an Act of Adjournal under this Act, addressed to the governor of the prison in whose custody an offender may be at the time, signed by the judge of a court of summary jurisdiction shall be a sufficient warrant to the governor of such prison for conveying the offender to the court.

Time for payment.

396.—(1) Where a court of summary jurisdiction has imposed a fine on an offender or ordered him to find caution, the court shall, subject to the provisions of the next following subsection, allow him at least seven days to pay the fine or the first instalment thereof or, as the case may be, to find caution; and any reference in this and the next following section to a failure to pay a fine or other like expression shall include a reference to a failure to find caution.

(2) If on the occasion of the imposition of a fine—

(*a*) the offender appears to the court to possess sufficient means to enable him to pay the fine forthwith; or

(*b*) on being asked by the court whether he wishes to have time for payment, he does not ask for time; or

PART II

(*c*) he fails to satisfy the court that he has a fixed abode; or

(*d*) the court is satisfied for any other special reason that no time should be allowed for payment,

the court may refuse him time to pay the fine and, if the offender fails to pay, may exercise its power to impose imprisonment and, if it does so, shall state the special reason for its decision.

(3) In all cases where time is not allowed by a court of summary jurisdiction for payment of a fine, the reasons of the court for not so allowing time shall be stated in the extract of the finding and sentence as well as in the finding and sentence itself.

(4) Where time is allowed for payment of a fine or payment by instalments is ordered, a court of summary jurisdiction shall not, on the occasion of the imposition of a fine, impose imprisonment in the event of a future default in paying the fine or an instalment thereof unless the offender is before it and the court determines that, having regard to the gravity of the offence or to the character of the offender, or to other special reason, it is expedient that he should be imprisoned without further inquiry in default of payment; and where a court so determines, it shall state the special reason for its decision.

(5) Where a court of summary jurisdiction has imposed imprisonment in accordance with the provisions of the last foregoing subsection, then, if at any time the offender asks the court to commit him to prison, the court may do so notwithstanding subsection (1) of this section.

(6) Nothing in the foregoing provisions of this section shall affect any power of a court of summary jurisdiction to order a fine to be recovered by civil diligence.

(7) Where time has been allowed for payment of a fine imposed by a court of summary jurisdiction, the court may, subject to any rules under this Part of this Act, on an application by or on behalf of the offender, and after giving the prosecutor an opportunity of being heard, allow further time for payment.

Application for further time for payment of fine.

397.—(1) An application by an offender for further time in which to pay a fine adjudged to be paid by him by a court of summary jurisdiction, or of instalments thereof, shall be made to that court, except in a case where a transfer of fine order shall have been made under section 403 of this Act or under section 72A of the Magistrates' Courts Act 1952, in which case the application shall be made to the court specified in the transfer order, or to the court specified in the last transfer order where there is more than one transfer.

1952 c. 55.

(2) A court to which an application is made under the foregoing subsection shall allow further time for payment of the fine or of instalments thereof, unless it is satisfied that the failure of the offender to make payment has been wilful or that the offender has no reasonable prospect of being able to pay if further time is allowed.

(3) An application made under this section to a court of summary jurisdiction may be made orally or in writing.

Restriction on imprisonment after fine or caution.

398.—(1) Where a court of summary jurisdiction has imposed a fine or ordered the finding of caution without imposing imprisonment in default of payment, it shall not impose imprisonment on an offender for failing to make payment of the fine, unless on an occasion subsequent to that sentence the court has enquired into his means in his presence; but this subsection shall not apply where the offender is in prison.

(2) A court of summary jurisdiction may, for the purpose of enabling enquiry to be made under this section—

(*a*) issue a citation requiring the offender to appear before the court at a time and place appointed in the citation; or

(*b*) issue a warrant of apprehension.

(3) On the failure of the offender to appear before the court in response to a citation under this section, the court may issue a warrant of apprehension.

(4) A warrant of apprehension issued by a court of summary jurisdiction under subsection (2) of this section shall be in the form, as nearly as may be, of the appropriate form contained in an Act of Adjournal under this Act.

(5) The minute of procedure in relation to an enquiry into the means of an offender under this section shall be in the form, as nearly as may be, of the appropriate form contained in an Act of Adjournal under this Act.

Payment by instalments.

399.—(1) Without prejudice to the operation of section 396(2) of this Act, where a court of summary jurisdiction has imposed a fine on an offender, the court may, of its own accord or on the application of the offender, order payment of that fine by instalments of such amounts and at such time as it may think fit, and it shall be the duty of the court to inform the offender of his right to make an application as aforesaid.

(2) Where any instalment is not paid by the time so ordered, the offender shall, subject to the provisions of the last foregoing section, be deemed to be in default of payment of a fine of the amount of the unpaid balance and dealt with accordingly, and

PART II

where the court has already imposed imprisonment in default of payment the offender shall be liable to be imprisoned for a period that bears to the period of imprisonment so imposed the same proportion, as nearly as may be, as the amount of the unpaid balance bears to the total amount of the fine.

Supervision pending payment of fine.

400.—(1) Where an offender has been allowed time for payment of a fine by a court of summary jurisdiction, the court may, either on the occasion of the imposition of the fine or on a subsequent occasion, order that he be placed under the supervision of such person as the court may from time to time appoint for the purpose of assisting and advising the offender in regard to payment of the fine.

(2) An order made in pursuance of the foregoing subsection shall remain in force so long as the offender to whom it relates remains liable to pay the fine or any part of it unless the order ceases to have effect or is discharged under the next following subsection.

(3) An order under this section shall cease to have effect on the making of a transfer of fine order under section 403 of this Act in respect of the fine or may be discharged by the court that made it without prejudice, in either case, to the making of a new order.

(4) Where an offender under 21 years of age has been allowed time for payment of a fine by a court of summary jurisdiction, the court shall not order the form of detention appropriate to him in default of payment of the fine unless he has been placed under supervision in respect of the fine or the court is satisfied that it is impracticable to place him under supervision.

(5) Where a court, being satisfied as aforesaid, orders the detention of a person under 21 years of age without an order under this section having been made, the court shall state the grounds on which it is so satisfied.

(6) Where an order under this section is in force in respect of an offender, the court shall not impose imprisonment in default of the payment of the fine unless the court has, before so doing, taken such steps as may be reasonably practicable to obtain from the person appointed for the supervision of the payment of his fine a report, which may be oral, on the offender's conduct and means, and shall consider any report so obtained in addition, in a case where an enquiry is required by section 398 of this Act, to that enquiry.

(7) When a court of summary jurisdiction shall have made an order under subsection (1) of this section placing an offender under the supervision of another person, a notice shall be sent

PART II

by the clerk of the court to such offender in the form, as nearly as may be, of the appropriate form contained in an Act of Adjournal under this Act.

(8) The person appointed to supervise such an offender shall communicate with him with a view to assisting and advising him in regard to payment of the fine, and unless the same or any instalment thereof shall have been paid to the clerk of the court within the time allowed by the court for payment, the person so appointed shall report to the court without delay after the expiry of such time, as to the conduct and means of the offender.

Supplementary provisions as to payment of fine.

401.—(1) Where under the provisions of section 396 or 400 of this Act a court is required to state a special reason for its decision or the grounds on which it is satisfied that it is undesirable or impracticable to place an offender under supervision, the reason or, as the case may be, the grounds shall be entered in the record of the proceedings along with the finding and sentence.

(2) Any reference in the sections last mentioned to imprisonment shall be construed, in the case of an offender on whom by reason of his age imprisonment may not lawfully be imposed, as a reference to the lawful form of detention in default of payment of a fine appropriate to that person, and any reference to prison shall be construed accordingly.

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

402. Any sentence or decree for any fine or expenses pronounced by any sheriff court or district 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:

Provided that such sentence or decree, or an extract thereof, shall be first produced to and indorsed by the sheriff or justice of such other district competent to have pronounced such sentence or decree in such other district.

Transfer of fine orders.

403.—(1) Where a court of summary jurisdiction has imposed a fine on a person convicted of an offence and it appears to the court that he is residing—

(*a*) within the jurisdiction of another court of summary jurisdiction in Scotland, or

(*b*) in any petty sessions area in England and Wales,

the court, if no term of imprisonment has been fixed by the court in default of payment of the fine, may order that payment of the fine shall be enforceable by that other court of summary jurisdiction or in that petty sessions area, as the case may be.

PART II

(2) An order under this section (in this section referred to as a transfer of fine order) shall specify the court by which or the petty sessons area in which payment is to be enforceable and, where the court to be specified in a transfer of fine order is a court of summary jurisdiction, it shall, in any case where the order is made by the sheriff court, be a sheriff court.

(3) Where a transfer of fine order is made with respect to any fine under this section, any functions under any enactment relating to that sum which, if no such order had been made, would have been exercisable by the court which made the order or by the clerk of that court shall cease to be so exercisable.

(4) Where a transfer of fine order within the meaning of this section or of section 72A of the Magistrates' Courts Act 1952 specifies a court of summary jurisdiction in Scotland, that court and the clerk of that court shall have all the like functions under this Part of this Act in respect of the fine or the sum in respect of which that order was made (including the power to make any further order under this section) as if the fine or the sum were a fine imposed by that court and as if any order made under this section or the said Act of 1952 in respect of the fine or the sum before the making of the transfer of fine order had been made by that court:

1952 c. 55.

Provided that for the purpose of determining the period of imprisonment which may be imposed under this Part of this Act by any court having jurisdiction in respect of a sum adjudged to be paid by a conviction of a magistrates' court acting for a petty sessions area, section 407 of this Act shall have effect as if for the Table set out in subsection (1) of that section there were substituted the Table set out in paragraph 1 of Schedule 3 to the said Act of 1952 or that Table as modified by paragraph 3 of that Schedule, as the case may be.

(5) The power of a court of summary jurisdiction in Scotland to make a transfer of fine order under this section shall be exercisable in relation to a fine imposed on any person or a sum due from any person under a recognizance forfeited by the Crown Court the payment of which is enforceable by the court of summary jurisdiction, notwithstanding that the Crown Court has in pursuance of section 31 of the Powers of Criminal Courts Act 1973 fixed a term of imprisonment which that person is to undergo if the fine or other sum is not duly paid or recovered.

1973 c. 62.

(6) Where a transfer of fine order under section 72A of the Magistrates' Courts Act 1952 or this section provides for the enforcement by a sheriff court in Scotland of a fine imposed by the Crown Court, the proviso to subsection (4) of this section shall not apply, but the term of imprisonment which may be imposed under this Part of this Act shall be the term fixed in

pursuance of section 31 of the Powers of Criminal Courts Act 1973 by the Crown Court or a term which bears the same proportion to the term so fixed as the amount of the fine remaining due bears to the amount of the fine imposed by that court, notwithstanding that the term exceeds the period applicable to the case under section 407 of this Act.

1973 c. 62.

Action of clerk of court on transfer of fine orders.

404.—(1) Where a court of summary jurisdiction makes a transfer of fine order under section 403 of this Act, the clerk of the court shall send to the clerk of the court specified in the order a notice in the form, as nearly as may be, of the appropriate form contained in an Act of Adjournal under this Act, and shall at the same time send to that clerk a statement of the offence of which the offender was convicted, and of the steps if any which shall have been taken to recover the fine, and shall give him such further information if any as, in his opinion, is likely to assist the court specified in the order in recovering the fine.

(2) In the case of a further transfer of fine order the clerk of the court which shall have made the order shall send to the clerk of the court by which the fine was imposed a copy of the notice which shall have been sent to the clerk of the court specified in the order.

(3) The clerk of the court specified in a transfer of fine order shall, as soon as may be after he has received the notice prescribed in subsection (1) of this section, send an intimation to the offender in the form, as nearly as may be, of the appropriate form contained in an Act of Adjournal under this Act.

(4) The clerk of the court specified in a transfer of fine order shall remit or otherwise account for any payment received in respect of the fine, to the clerk of the court by which the fine was imposed, and if the sentence shall have been enforced otherwise than by payment of the fine, he shall inform the clerk of that court how the sentence was enforced.

Imprisonment in default of payment of fine.

405. Subject to the provisions of sections 396 to 401 of this Act, where a court of summary jurisdiction has imposed a fine on any person, the court may impose a period of imprisonment in default of payment thereof, whether or not the statute or order under which the fine is imposed makes any provision for its recovery, but that period shall not exceed the maximum period applicable to the fine under section 407 of this Act.

Substitution of custody for imprisonment where a child defaults on fine.

406. Where a child would, if he were an adult, be liable to be imprisoned in default of payment of any fine, damages or expenses, the court may, if it considers that none of the other methods by which the case may legally be dealt with is suitable,

PART II

order that the child be detained for such period, not exceeding one month, as may be specified in the order in a place chosen by the local authority in whose area the court is situated.

Period of imprisonment for non-payment of fine.

407.—(1) The maximum period of imprisonment that may be imposed in default of payment of any sum imposed by a court of summary jurisdiction as a fine or for failure to find caution shall be as follows:—

Amount of sum imposed	*Period of imprisonment*
Not exceeding £2	7 days
Exceeding £2 but not exceeding £5	14 days
Exceeding £5 but not exceeding £20	30 days
Exceeding £20 but not exceeding £50	60 days
Exceeding £50	90 days

(2) If in any sentence or extract sentence the period of imprisonment inserted in default of payment of a fine or on failure to find caution is in excess of that competent under this Part of this Act, such period of imprisonment shall be reduced to the maximum period under this Part of this Act applicable to such default or failure, and the judge who pronounced the sentence shall have power to order the sentence or extract to be corrected accordingly.

(3) The periods of imprisonment set forth in subsection (1) of this section shall apply to the non-payment of any sum imposed as aforesaid by a court of summary jurisdiction under a statute or order passed or made before the first day of June 1909, notwithstanding that that statute or order fixes any other period of imprisonment.

(4) The provisions of this section shall be without prejudice to the operation of section 409 of this Act.

Discharge from imprisonment to be specified.

408. All warrants of imprisonment for payment of a fine, or for finding of caution, shall specify a period at the expiry of which the person sentenced shall be discharged, notwithstanding such fine shall not have been paid, or caution found.

Payment of fine in part by prisoner. 1952 c. 61.

409.—(1) Where a person committed to prison or otherwise detained for failure to pay a fine imposed by a court of summary jurisdiction pays to the governor of the prison, under conditions prescribed by rules made under the Prisons (Scotland) Act 1952, any sum in part satisfaction of the fine, the term of imprisonment shall be reduced by a number of days bearing as nearly as

possible the same proportion to the total number of days for which the prisoner is sentenced as the sum so paid bears to the total amount of the fine.

(2) In this section references to a prison and to the governor thereof shall include respectively references to any other place in which a person may be lawfully detained in default of payment of a fine, and to an officer in charge thereof.

(3) Provision may be made by Act of Adjournal for the application of sums paid under this section and for any matter incidental thereto.

(4) The provisions of Schedule 7 to this Act shall apply for the purposes of this section.

Remission of fine where young offender detained.

410. Where, in the case of an offender detained in a Borstal institution, detention centre or any place under an order made by virtue of section 206 or 413 of this Act, or under supervision following release therefrom, who has not made payment of a fine imposed before his being so detained, it appears to the Secretary of State that remission of the fine might assist the rehabilitation of the offender, he may, after consultation where practicable with the judge by whom or the presiding chairman of the court by which sentence was passed, remit that fine in whole or in part.

Recovery by civil diligence.

411.—(1) Where any fine falls to be recovered by civil diligence in pursuance of this Part of this Act or in any case in which a court of summary jurisdiction may think it expedient to order a fine to be recovered by civil diligence, there shall be added to the finding of the court imposing the fine the words "and decerns and ordains instant execution by arrestment and also execution to pass hereon by poinding the sale, after a charge of ten free days," and such diligence, whatever the amount of the fine imposed, may be executed in the same manner as if the proceedings were on an extract decree of the sheriff small debt court.

(2) Where proceedings by civil diligence under this section are adopted, imprisonment shall not thereafter be competent.

(3) Proceedings by civil diligence under this section may be adopted at any time after the imposition of the fine to which they relate:

Provided that no such proceedings shall be authorised after the court has imposed imprisonment in default of payment of the fine.

Payment of fines to be made to clerk of court.

412. All fines and expenses imposed under this Part of this Act shall be paid to the clerk of court to be accounted for by him to the person entitled thereto, and it shall not be necessary

PART II

to specify in any sentence the person entitled to payment of any such fine or expenses, unless where it is necessary to provide for the division of the penalty.

Residential and Borstal Training

Committal for residential training.

413. Where a child charged summarily before the sheriff with an offence pleads guilty to, or is found guilty of, that offence the sheriff may order the child to be committed for such period not exceeding two years as may be specified in the order to such a place as the Secretary of State may direct for the purpose of undergoing residential training, and where such an order is made the child shall during that period be liable to be detained in that place subject to such conditions as the Secretary of State may direct.

Borstal training.

414.—(1) Where a person who is not less than 16 but under 21 years of age is convicted of an offence punishable with imprisonment, and the court is satisfied having regard to his character and previous conduct, and to the circumstances of the offence, that it is expedient for his reformation and the prevention of crime that he should undergo a period of training in a Borstal institution, the court may, subject to subsection (5) of this section, pass a sentence of Borstal training in lieu of any other sentence.

(2) Before a sentence of Borstal training is passed the court shall call for and consider a report on the offender's physical and mental condition and his suitability for such a sentence, which report it shall be the duty of the Secretary of State to cause to be furnished to the court.

(3) If on consideration of a report furnished in pursuance of subsection (2) of this section the court, either ex proprio motu or on the application of either party, thinks it expedient to do so, it may require any person concerned in the preparation of the report or with knowledge of matters dealt with in the report to appear with a view to his examination on oath regarding any of the matters dealt with in the report, and such person may be examined or cross-examined acccordingly.

(4) A copy of any report furnished under subsection (2) of this section shall be given by the clerk of the court to the offender or his solicitor at least two clear days before the diet at which the sentence is to be passed.

(5) The power of a court to pass a sentence of Borstal training under subsection (1) of this section shall not be exercised in the case of any person on whom such a sentence has previously been imposed and who has served any part thereof.

Imprisonment, etc. PART II

Restriction on imprisonment of person under 17.

415. No court shall impose imprisonment on a person under 17 years of age.

Restriction on detention of person under 21.

416.—(1) No court shall impose detention on a person under 21 years of age, unless the court is of opinion that no other method of dealing with him is appropriate.

(2) For the purpose of determining in pursuance of the provisions of subsection (1) of this section whether any other method of dealing with a person mentioned therein is appropriate, the court shall obtain information about that person's circumstances from an officer of a local authority or otherwise and shall consider that information; and the court shall take into account any information before it which is relevant to his character and to his physical and mental condition.

(3) Where a court imposes detention on an offender under 21 years of age, the court shall state the reason for its opinion that no other method of dealing with him is appropriate, and the reason shall be entered in the record of the proceedings along with the finding and sentence.

(4) Where in the case of a person who is of or over 16 years of age but less than 21 years of age the court is of opinion as aforesaid, and either—

(*a*) if the person has been convicted of an offence punishable with imprisonment, is satisfied, having considered all the circumstances of the case, that neither a sentence of Borstal training nor a sentence of detention in a detention centre should be imposed; or

(*b*) would have power but for this section to impose imprisonment otherwise than by sentence;

it shall, subject to the provisions of this Act, instead of imposing a term of imprisonment upon him impose detention in a young offenders institution for a term not exceeding the term for which he could have been imprisoned.

(5) For the purposes of any reference in this section to a term of imprisonment or to a term of detention in a young offenders institution, consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.

Restriction on imprisonment of first offenders.

417.—(1) A court of summary jurisdiction shall not impose imprisonment on a first offender of or over the age of 21 unless the court is of the opinion that no other method of dealing with him is appropriate; and section 416 (2) of this Act shall apply for the purpose of determining whether any other method of dealing with such a person is appropriate as it applies for

PART II

the purpose of determining whether any other method of dealing with a person under the age of 21 is appropriate.

(2) Section 416 (3) of this Act shall, with the necessary modifications, apply where a first offender of or over the age of 21 is sentenced to imprisonment as it applies where imprisonment is imposed on a person under that age.

(3) A person falling to be dealt with for an offence shall be treated for the purposes of this section as a first offender if, but only if, he has not since attaining the age of 17 been convicted of any other offence, except an offence not punishable with imprisonment.

(4) In determining for the purposes of subsection (3) of this section whether a person has been convicted of an offence, no account shall be taken of any of the following enactments, that is to say—

(*a*) section 191 or 392 of this Act (under which a conviction leading to probation or discharge is to be disregarded except as therein mentioned);

1973 c. 62.

(*b*) section 13 of the Powers of Criminal Courts Act 1973 (which makes similar provision in respect of convictions on indictment in England and Wales);

(*c*) section 8 of the Probation Act (Northern Ireland) 1950 or any corresponding enactment of the Parliament of Northern Ireland for the time being in force;

and any order made by a court of summary jurisdiction under section 383 or 384 of this Act shall be treated as a conviction.

(5) For the purposes of subsection (3) of this section, a previous conviction shall be disregarded after the expiration of a period of 10 years from the date of that conviction, being a period exclusive of any period during which the offender was in custody under sentence in respect of the conviction.

(6) In this section "court" does not include a court-martial, and "offence not punishable with imprisonment" means an offence for which no offender may be sentenced to imprisonment.

Detention in a detention centre.

418.—(1) Subject to the provisions of this section, in any case where a person who is not less than 16 but under 21 years of age is convicted of an offence punishable with imprisonment, and the court has been notified by the Secretary of State that a detention centre is available for the reception from that court of persons of his class or description, it may pass on him a sentence of detention in that centre for a fixed term of three months.

(2) A court shall not pass a sentence under this section in the case of a person who has served or is serving a sentence involving his detention for two months or more in a prison or in a young offenders institution or a sentence of Borstal training, or in the case of a person who has served a sentence of detention in a detention centre, unless the court is of the opinion that, having regard to special considerations arising out of the circumstances of the case and the character of the offender, this method of dealing with him is the most appropriate.

(3) Where it appears to the Secretary of State that a person detained in a detention centre is unfit for such detention by reason of his health, without prejudice to any other powers he may have in the matter, he may, after consultation where practicable with the judge by whom or the presiding chairman of the court by which the sentence was passed, release that person; and he shall then be required to be under supervision in accordance with section 11(1) of the Criminal Justice (Scotland) Act 1963. 1963 c. 39.

Term of detention in a detention centre.

419.—(1) The term for which a person may be detained in a detention centre shall not exceed three months at a time; and accordingly no court may pronounce an order the effect of which would be that a person would be liable to be detained for more than that period.

(2) Where a court has before it a person convicted of an offence punishable with imprisonment who is serving a sentence of detention in a detention centre or who has been sentenced to and has not yet started to serve such a sentence as aforesaid, it may pass either of the following sentences (subject to the requirements of any enactment relating to those sentences)—

(*a*) a sentence of detention in a young offenders institution, or, if the person is of or over 21 years of age, a sentence of imprisonment, for a period not exceeding the aggregate of the unexpired portion of the sentence of detention in a detention centre and the maximum period of detention in a young offenders institution or of imprisonment, as the case may be, which the court may impose for the offence of which it has convicted the person; or

(*b*) a sentence of Borstal training;

and in that event the sentence of detention in a detention centre shall cease to have effect.

PART II

Recall to Borstal on re-conviction.

420.—(1) Where a person sentenced to Borstal training, being under supervision after his release from a Borstal institution, is convicted of an offence punishable with imprisonment, the court may, instead of dealing with him in any other manner, make an order for his recall.

(2) An order for the recall of a person made as aforesaid shall have the like effect as an order for recall made by the Secretary of State under section 33(4) of the Prisons (Scotland) Act 1952.

1952 c. 61.

Recall to young offenders institution on re-conviction.

421.—(1) Where a person sentenced to detention in a young offenders institution, being under supervision after his release from such an institution, is convicted of an offence punishable with imprisonment, the court may, instead of dealing with him in any other manner, make an order for his recall.

(2) An order for the recall of a person made as aforesaid shall have the like effect as an order for recall made by the Secretary of State under section 12 of the Criminal Justice (Scotland) Act 1963.

1963 c. 39.

Revocation of licence by court.

1967 c. 80.

422.—(1) If a person subject to a licence under section 60 or 61 of the Criminal Justice Act 1967 is convicted of an offence punishable on indictment with imprisonment, the court may, whether or not it passes any other sentence on him, revoke the licence.

(2) The power conferred on a court by this section to revoke the licence of any person released under section 60 of the Criminal Justice Act 1967 after being transferred to either part of Great Britain from another part of the United Kingdom, the Channel Islands or the Isle of Man shall be exercisable notwithstanding anything in section 26(6) of the Criminal Justice Act 1961 (exclusion of supervision of persons so transferred).

1961 c. 39.

Return to prison in case of breach of supervision.

423.—(1) If, on sworn information laid by or on behalf of the Secretary of State, it appears to the sheriff that a person, being under supervision under Schedule 1 to the Criminal Justice (Scotland) Act 1963, has failed to comply with any of the requirements imposed on him by his notice of supervision, the sheriff may issue a warrant for the arrest of that person or may, if he thinks fit, instead of issuing such a warrant in the first instance, issue a citation requiring the person to appear before him at such time as may be specified in the citation.

(2) If it is proved to the satisfaction of the sheriff before whom a person appears or is brought in pursuance of the foregoing subsection that the person has failed to comply with any of the requirements of the notice of supervision, the sheriff shall,

PART II

unless having regard to all the circumstances of the case, he considers it unnecessary or inexpedient to do so, order that he be sent back to prison for such term as may be specified in that order, not exceeding whichever is the shorter of the following, that is to say—

(*a*) a period of three months;

(*b*) a period equal to so much of the period of 12 months referred to in paragraph 1 of Schedule 1 to the Criminal Justice (Scotland) Act 1963 as was unexpired on the date on which proceedings were commenced. 1963 c. 39.

(3) Subject to the following provisions of this section, this Part of this Act shall apply in relation to proceedings for an order as aforesaid as it applies in relation to proceedings in respect of a summary offence, and references in this Part of this Act to an offence, trial, conviction or sentence shall be construed accordingly.

(4) Proceedings for an order under subsection (2) of this section may be brought before a sheriff having jurisdiction in the area in which the supervising officer carries out his duties.

(5) A warrant issued for the purposes of proceedings for an order under subsection (2) above may, if the person laying the information so requests, bear an endorsement requiring any constable charged with its execution to communicate with the Secretary of State before arresting the person under supervision if the constable finds that that person is earning an honest livelihood or that there are other circumstances which ought to be brought to the notice of the Secretary of State.

(6) Where a person while under supervision under Schedule 1 to the Criminal Justice (Scotland) Act 1963 is convicted of an offence for which the court has power to pass sentence of imprisonment, the court may, instead of dealing with him in any other manner, make such an order as could be made by a sheriff under subsection (2) of this section in proceedings for such an order.

(7) The Secretary of State may at any time release from prison a person who has been sent back to prison under subsection (2) or (6) of this section; and the provisions of this section and of the said Schedule shall apply to a person released by virtue of this subsection, subject to the following modifications:

(*a*) that the period of 12 months referred to in paragraph 1 of the said Schedule shall be calculated from the date of his original release; and

(*b*) in relation to any further order for sending him back to prison under this section, the period referred to in subsection (2)(*a*) of this section shall be reduced by

PART II

any time during which he has been detained by virtue of the previous order.

(8) In any proceedings, a certificate purporting to be signed by or on behalf of the Secretary of State and certifying—

(*a*) that a notice of supervision was given to any person in the terms specified in the certificate and on the date so specified; and

(*b*) either that no notice has been given to him under paragraph 3 of the said Schedule or that a notice has been so given in the terms specified in the certificate,

shall be sufficient evidence of the matters so certified; and the fact that a notice of supervision was given to any person shall be sufficient evidence that he was a person to whom section 14 of the Criminal Justice (Scotland) Act 1963 applies.

1963 c. 39.

1961 c. 39.

(9) For the purposes of Part III of the Criminal Justice Act 1961, a person who has been sent back to prison under subsection (2) or (6) of this section, and has not been released again, shall be deemed to be serving part of his original sentence, whether or not the term of that sentence has in fact expired.

Detention in precincts of court.

424. Where a court of summary jurisdiction has power to impose imprisonment on an offender it may, in lieu of so doing, order that the offender be detained within the precincts of the court or at any police station, till such hour, not later than eight in the evening on the day on which he is convicted, as the court may direct:

Provided that before making an order under this section a court shall take into consideration the distance between the proposed place of detention and the offender's residence (if known to, or ascertainable by, the court), and shall not make any such order under this section as would deprive the offender of a reasonable opportunity of returning to his residence on the day on which the order is made.

No imprisonment for less than five days.

425.—(1) No person shall be sentenced to imprisonment by a court of summary jurisdiction for a period of less than five days.

(2) Where a court of summary jurisdiction has power to impose imprisonment on an offender, it may, if any suitable place provided and certified as hereinafter mentioned is available for the purpose, sentence the offender to be detained therein, for such period not exceeding four days as the court thinks fit, and an extract of the finding and sentence shall be delivered with the offender to the person in charge of the place where the offender is to be detained and shall be a sufficient authority for his detention in that place in accordance with the sentence.

(3) The expenses of the maintenance of offenders detained under this section shall be defrayed in like manner as the expenses of the maintenance of prisoners under the Prisons (Scotland) Act 1952. 1952 c. 61.

(4) The Secretary of State may, on the application of any police authority, certify any police cells or other similar places provided by the authority to be suitable places for the detention of persons sentenced to detention under this section, and may by statutory instrument make regulations for the inspection of places so provided, the treatment of persons detained therein and generally for carrying this section into effect.

(5) No place certified under this section shall be used for the detention of females unless provision is made for their supervision by female officers.

(6) In this section the expression "police authority" means a regional or islands council, except that where there is an amalgamation scheme under the Police (Scotland) Act 1967 in force it means a joint police committee. 1967 c. 77.

(7) Until 16th May 1975 the last foregoing subsection shall have effect as if, for the words "regional or islands council", there were substituted the words "council of a county or of a burgh which maintains a separate police force".

Legal custody.

426. Any person required or authorised by or under this Act to be taken to any place or to be kept in custody shall, while being so taken or kept, be deemed to be in legal custody.

Miscellaneous provisions as to conviction, sentence, etc.

Conviction of part only of charge.

427. A conviction of a part or parts only of the charge or charges libelled in a complaint shall imply dismissal of the rest of the complaint.

Art and part guilt of statutory offence.

428. A person may be convicted of, and punished for, a contravention of any statute or order, notwithstanding that he was guilty of such contravention as art and part only.

"Conviction" and "sentence" not to be used in relation to a child.

429. The words "conviction" and "sentence" shall not be used in relation to children dealt with summarily and any reference in any enactment, whether passed before or after the commencement of this Act, to a person convicted, a conviction or a sentence shall in the case of a child be construed as including a reference to a person found guilty of an offence, a finding of guilt or an order made upon such a finding as the case may be.

PART II

Forms of finding and sentence.

430.—(1) The finding and sentence and any order of a court of summary jurisdiction, as regards both offences at common law and offences under any statute or order, shall be entered in the record of the proceedings in the form, as nearly as may be, of the appropriate form contained in Part V of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act, which shall be sufficient warrant for all execution thereon and for the clerk of court to issue extracts containing such executive clauses as may be necessary for implement thereof; and, when imprisonment forms part of any sentence or other judgment, warrant for the apprehension and interim detention of the accused pending his being committed to prison shall, where necessary, be implied.

1954 c. 48.

(2) Where a fine imposed by a court of summary jurisdiction is paid at the bar it shall not be necessary for the court to refer to the period of imprisonment applicable to the non-payment thereof.

(3) Where several charges at common law or under any statute or order are embraced in one complaint, a cumulo fine may be imposed in respect of all or any of such charges of which the accused is convicted.

(4) A sentence following on a conviction by a court of summary jurisdiction may be framed so as to take effect on the expiry of any previous sentence which at the date of such conviction the accused is undergoing.

Consideration of time spent in custody.

1952 c. 61.

431. A court, in passing a sentence of imprisonment or detention in a young offenders institution as defined in section 31(1)(*d*) of the Prisons (Scotland) Act 1952 on a person for any offence, shall, 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.

Deferred sentence.

432. It shall be competent for a court to defer sentence after conviction for a period and on such conditions as the court may determine.

Sentence in open court.

433. Every sentence imposed by a court of summary jurisdiction shall unless otherwise provided be pronounced in open court in the presence of the accused, but need not be written out or signed in his presence.

Further provision as to sentence.

434.—(1) It shall be competent at any time before imprisonment has followed on a sentence for the court to alter or modify it; but no higher sentence than that originally pronounced shall be competent.

PART II

(2) The signature of the judge or clerk of court to any sentence shall be sufficient also to authenticate the findings on which such sentence proceeds.

(3) The power conferred by subsection (1) of this section to alter or modify a sentence shall be exercisable without requiring the attendance of the accused and, without prejudice to the generality of the power, shall include power, in the case where payment of a fine by instalments has been ordered, to reduce the amount, or allow further time for the payment, of any instalment (whether the time for payment thereof has or has not expired), or to order payment of the fine, so far as unpaid, by instalments of smaller amounts or at longer intervals than originally allowed.

Expenses.

435. The following provisions shall have effect with regard to the award of expenses in a summary prosecution:—

(*a*) expenses may be awarded to or against a private prosecutor but shall not be awarded against any person prosecuting in the public interest unless the statute or order under which the prosecution is brought expressly or impliedly authorises such an award;

(*b*) the finding regarding expenses shall be stated in the sentence or judgment disposing of the case;

(*c*) expenses awarded to the prosecutor shall be restricted to the fees set forth in Schedule 3 to the Summary Jurisdiction (Scotland) Act 1954; 1954 c. 48.

(*d*) the court may award expenses against the accused without imposing any fine or may direct the expenses incurred by the prosecutor, whether public or private, to be met wholly or partly out of any fine imposed;

(*e*) expenses awarded against the accused, where the fine or fines imposed do not exceed £12, shall not exceed £3:

Provided that if it appears to the court that the reasonable expenses of the prosecutor's witnesses together with the other expenses exceed the sum of £3, the court may direct the expenses of those witnesses to be paid wholly or partly out of the fine;

(*f*) where a child is himself ordered by a sheriff sitting summarily to pay expenses in addition to a fine, the amount of the expenses so ordered to be paid shall in no case exceed the amount of the fine;

(*g*) any expenses awarded shall be recoverable by civil diligence in accordance with section 411 of this Act.

PART II
Forfeiture of implements.

436. Where a person is convicted of any offence by a court of summary jurisdiction or where a probation order is made by such a court in respect of any person, the court may—

(*a*) order the forfeiture of any instruments or other articles found in his possession and used or calculated to be of use in the commission of the offence of which such person was convicted or on account of which the probation order was made and,

(*b*) save as otherwise expressly provided in any enactment with regard to the disposal of articles forfeited on conviction of an offence, order such instruments or articles to be destroyed or otherwise disposed of.

Warrant of search for forfeited articles.

437. Where a court has made an order for the forfeiture of an article, the court or any justice of the peace 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; and for the purposes of this section, any reference to a justice of the peace includes a reference to the sheriff and to a magistrate.

Register of children found guilty of offences.

438. In addition to any other register required by law, a separate register of children found guilty of offences and of children discharged on bond or put on probation shall be kept for every summary court by the chief constable or other person charged with the duty of keeping registers of convictions. The register shall apply to children of such age, and shall include such particulars, as may be directed by the Secretary of State, and it shall be the duty of the keeper of the register, within seven days after any such child has been dealt with by the court, to transmit a copy of the entry relating to the child to the education authority for the area in which the child resides.

Correction of errors.

439. It shall be competent to correct any error in the record of the proceedings in a summary prosecution or in the extract of any sentence or order of the court at any time prior to execution thereon, and such correction shall be authenticated by the initials of the clerk of court.

PART II

440. Where imprisonment is authorised by the sentence of a court of summary jurisdiction, an extract of the finding and sentence in the form, as nearly as may be, of the appropriate form contained in Part V of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act shall be a sufficient warrant for the apprehension and commitment of the accused, and no such extract shall be void or liable to be set aside on account of any error or defect in point of form.

Extract sufficient warrant for imprisonment. 1954 c. 48.

441. In any proceedings in a court of summary jurisdiction consisting of more than one judge, the signature of one judge shall be sufficient in all warrants or other proceedings prior or subsequent to conviction, although the presence and signature of two or more judges may be necessary to conviction of the offence in respect of which such warrants are granted or proceedings take place, and it shall not be necessary that the judge so signing shall be one of the judges trying or dealing with the case otherwise.

Provision for court comprising more than one judge.

Review

442. On the final determination of any summary prosecution, either party may, notwithstanding any provision in any statute excluding review, make application to the court to state a case for the opinion of the High Court, and on such application being made the court, subject to the conditions hereinafter mentioned, shall be bound to state a case for such opinion, and it shall thereupon be competent to appeal to, and to bring under the review of, the High Court by stated case—

Appeal by stated case.

(*a*) the relevancy of the complaint;

(*b*) any irregularity in procedure;

(*c*) any alleged error of the court in point of law; and

(*d*) generally any matter which might immediately before the commencement of this Act have been competently reviewed by suspension, advocation, or appeal under the Heritable Jurisdictions (Scotland) Act 1746 or otherwise. 1746 c. 43.

443. Where a hospital order, guardianship order or an order restricting discharge has been made by a court in respect of a person charged or brought before it, he may, without prejudice to any other form of appeal under any rule of law, appeal against that order in the same manner as against a conviction.

Appeals against hospital orders, etc.

PART II
Manner and time of appeal.

444.—(1) Application to have a case stated shall be made at the time when judgment is given, or at any time within 10 days thereafter, and shall be signed by the appellant or his solicitor and either written on the complaint or lodged with the clerk of court, and where the latter course is adopted the clerk of court shall enter in the record of proceedings the date when the application was lodged and shall thereupon intimate the appeal to the respondent.

(2) Where such an application has been made by the person convicted, and the judge by whom he was convicted dies before signing the case or is precluded by illness or other cause from doing so, it shall be competent for the convicted person to present a bill of suspension to the High Court and to bring under the review of that court any matter which might have been brought under review by stated case.

(3) Without prejudice to any other power of relief which the High Court may have, where it appears to that court on application made in accordance with the following provisions of this section, that the applicant has failed to comply with any of the requirements of subsection (1) of this section, the High Court may direct that such further period of time as it may think proper be afforded to the applicant to comply with any requirement of the aforesaid provisions.

(4) Any application for a direction under the last foregoing subsection shall be made in writing to the Clerk of Justiciary and shall state the grounds for the application, and notification of the application shall be made by the appellant or his solicitor to the clerk of the court from which the appeal is to be taken, and the clerk shall thereupon transmit the complaint, documentary productions and any other proceedings in the cause to the Clerk of Justiciary.

(5) The High Court shall dispose of any application under this section in like manner as an application to review the decision of an inferior court on a grant of interim liberation, but shall have power—

(*a*) to dispense with a hearing; and

(*b*) to make such enquiry in relation to the application as the court may think fit;

and when the High Court has disposed of the application the Clerk of Justiciary shall inform the clerk of the inferior court of the result.

(6) Section 457(*a*) of this Act shall apply for the purpose of giving effect to the provisions of this section.

PART II

Caution by appellant.

445. Immediately on an appeal under section 442 of this Act being taken, the court shall fix a sum to be consigned by the appellant, or for which caution is to be found, to meet any fine and expenses imposed and the expenses of the appeal, and the appellant shall not be entitled to have a case stated unless within five days after the date of his appeal he has made consignation, or found such caution, to the satisfaction of the clerk of court and has also paid the clerk his fees for preparing the case:

Provided that—

(i) the court shall have power in any case where it deems it expedient to do so to dispense with consignation or the finding of caution, and

(ii) a person prosecuting in the public interest shall not be bound to make consignation or to find caution.

Procedure where appellant in custody.

446.—(1) If an appellant under section 442 of this Act is in custody, the court may, on consignation being made or caution being found in accordance with the last foregoing section, grant interim liberation on such conditions as to caution or otherwise as the court may fix, and may grant a sist of execution, or may dispense with further consignation or caution, or may make any other interim order which the justice of the case may require, or may refuse to grant interim liberation.

(2) An application for interim liberation shall be disposed of by the court within 24 hours after such application has been made. The appellant, if dissatisfied with the amount of caution fixed, or on refusal of liberation, may, within 24 hours after the judgment of the court, appeal thereagainst by a note of appeal written on the complaint and signed by himself or his solicitor, and the complaint and proceedings shall thereupon be transmitted to the Clerk of Justiciary, and the High Court or any judge thereof, either in court or in chambers, shall, after hearing parties, have power to review the decision of the inferior court and to grant interim liberation on such conditions as such court or judge may think fit, or to refuse interim liberation.

(3) No clerks' fees, court fees or other fees or expenses shall be exigible from or awarded against an appellant in custody in respect of an appeal to the High Court against the amount of caution fixed or on account of refusal of liberation by a court of summary jurisdiction.

(4) If an appellant who has been granted interim liberation does not thereafter proceed with his appeal, the inferior court shall have power to grant warrant to apprehend and imprison him for such period of his sentence as at the date of his liberation remained unexpired, such period to run from the date of his imprisonment under such warrant.

PART II

(5) Where an appellant who has been granted interim liberation does not thereafter proceed with his appeal, the court from which the appeal was taken shall have power, where at the time of the abandonment of the appeal the person is serving a term or terms of imprisonment imposed subsequently to the conviction appealed against, to order that the sentence or, as the case may be, the unexpired portion of that sentence relating to that conviction should run from such date as the court may think fit, not being a date later than the date on which the term or terms of imprisonment subsequently imposed expired.

Draft stated case to be prepared.

447.—(1) The clerk of court shall, within 10 days from an application for a stated case under section 442 of this Act, or when consignation or caution is ordered, within five days from the date when consignation has been made or caution found, prepare a draft stated case, and shall within the said period send the draft to the appellant or his solicitor, and a duplicate thereof to the respondent or his solicitor.

(2) A stated case shall be in the form, as nearly as may be, of the form contained in Part VI of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or of the appropriate form contained in an Act of Adjournal under this Act, and shall set forth the particulars of any matters competent for review which the appellant desires to bring under the review of the High Court, and of the facts, if any, proved in the case, and any point of law decided, and the grounds of the decision.

1954 c. 48.

Adjustment and signature of case.

448.—(1) Within one month after receipt of the draft case under the last foregoing section, each party shall cause to be transmitted to the judge against whose judgment the appeal is taken and to the other parties a note of any adjustments he desires to have made on the draft case or intimate that he has no such adjustments to suggest, and if the appellant fails to do so he shall be deemed to have abandoned his appeal, and in any such case the court shall have the like power to grant warrant for his apprehension and imprisonment as is conferred by section 446 of this Act.

(2) Within 14 days after the latest date on which any such adjustments or intimation as aforesaid are or is received, the judge against whose judgment the appeal is taken shall (unless the appellant is deemed to have abandoned his appeal) after considering any such adjustments, state and sign the case.

(3) As soon as the case shall be signed by the judge against whose judgment the appeal is taken, the clerk of court shall send it to the appellant and transmit the complaint, productions and any other proceedings in the cause to the Clerk of the Justiciary.

(4) The appellant shall within 10 days after receiving the case send a copy of it to the respondent and cause it to be transmitted to or lodged with the Clerk of Justiciary together with a certificate by himself or his solicitor that a copy has been sent to the respondent in accordance with the requirement hereinbefore contained.

(5) If the appellant fails to comply with the last foregoing subsection he shall be deemed to have abandoned his appeal, and the court shall have the like power to grant warrant for his apprehension and imprisonment as is conferred by section 446 of this Act.

(6) Without prejudice to any other power of relief which the High Court may have, where it appears to that court on application made in accordance with the following provisions of this section, that the applicant has failed to comply with any of the requirements of subsection (4) of this section, the High Court may direct that such further period of time as it may think proper be afforded to the applicant to comply with any requirement of the aforesaid provisions.

(7) Any application for a direction under the last foregoing subsection shall be made in writing to the Clerk of Justiciary and shall state the grounds for the application.

(8) The High Court shall dispose of any application under this section in like manner as an application to review the decision of an inferior court on a grant of interim liberation, but shall have power—

(*a*) to dispense with a hearing ; and

(*b*) to make such enquiry in relation to the application as the court may think fit ;

and when the High Court has disposed of the application the Clerk of Justiciary shall inform the clerk of the inferior court of the result.

(9) Section 457(*a*) of this Act shall apply for the purpose of giving effect to the provisions of this section.

Abandonment of appeal.

449.—(1) An appellant under section 442 of this Act may at any time prior to lodging the case with the Clerk of Justiciary abandon his appeal by minute signed by himself or his solicitor, written on the complaint or lodged with the clerk of the inferior court, and intimated to the respondent, but such abandonment shall be without prejudice to any other competent mode of appeal, review, advocation or suspension.

(2) On the case being lodged with the Clerk of Justiciary, the appellant shall be held to have abandoned any other mode of appeal which might otherwise have been open to him.

PART II

Record of procedure in appeal.

450. On an appeal being taken under section 442 of this Act the clerk of court shall record on the complaint the different steps of procedure in the appeal, and such record shall be evidence of the dates on which the various steps of procedure took place. The forms of procedure in appeals shall be as nearly as may be in accordance with the forms contained in Part VI of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act.

1954 c. 48.

Computation of time.

451. In computing any number of days for the purpose of the provisions of this Part of this Act relating to appeal, Sundays and public holidays shall be excluded.

Hearing of appeal.

452.—(1) A stated case under this Part of this Act shall be heard by the High Court on such date as it may fix, and the High Court shall have power to affirm, reverse or amend the determination of the inferior court, or to impose a fine instead of imprisonment where imprisonment has been awarded, or to reduce the period of imprisonment, or to reduce any fine imposed by the inferior court, or to remit the case back to the inferior court to be amended, and thereafter, on the case being amended and returned, to deliver judgment thereon, or to remit the case to the inferior court with their opinion thereon.

(2) Where in any such case an appeal against an acquittal is sustained, the High Court may either convict and sentence the accused or may remit the case to the inferior court with instructions to convict and sentence the accused, who shall be bound to attend any diet fixed by such court for this purpose.

(3) The High Court shall have power in appeals under this Part of this Act to award such expenses both in the High and inferior courts as it may think fit.

(4) The High Court may remit to any fit person to inquire and report in regard to the facts and circumstances of any appeal, and on considering such report may pronounce judgment.

(5) Where an appellant has been granted interim liberation, whether his appeal is under this Part of this Act or otherwise, he shall appear personally in court on the day or days fixed for the hearing of his appeal, failing which, unless the court shall on cause shown permit the appeal to be heard, he shall be held to have abandoned it.

(6) Where an appeal is dismissed or refused in whole or in part, the High Court shall have power to grant warrant to apprehend and imprison the appellant for any term, to run from the date of his imprisonment, not longer than that part of the term of imprisonment specified in the sentence brought under review which remained unexpired at the date of liberation.

(7) Where at the time an appeal is dismissed or refused as aforesaid the appellant is serving a term or terms of imprisonment imposed subsequently to the conviction appealed against, the High Court shall have the like powers in regard to him as may be exercised by a court of summary jurisdiction in pursuance of section 446(5) of this Act.

Consent by prosecutor to set aside conviction.

453.—(1) Where an appeal has been taken under section 442 of this Act or by suspension or otherwise, and the prosecutor, on the appeal being intimated to him, is not prepared to maintain the judgment appealed against, he may by a minute signed by him and written on the complaint or lodged with the clerk of court consent to the conviction and sentence being set aside, either in whole or in part. Such minute shall set forth the grounds on which the prosecutor is of opinion that the judgment cannot be maintained.

(2) A copy of any minute under the foregoing subsection shall be sent by the prosecutor to the appellant, and the clerk of court shall thereupon ascertain from the appellant or his solicitor whether he desires to be heard by the High Court before the appeal is disposed of, and shall note on the record whether or not the appellant so desires, and shall thereafter transmit the complaint and relative proceedings to the Clerk of Justiciary.

(3) The Clerk of Justiciary on receipt of a complaint and relative proceedings under the last foregoing subsection shall lay them before any judge of the High Court, either in court or in chambers, and such judge, after hearing parties if they desire to be heard, or without hearing parties, may set aside the conviction either in whole or in part and award expenses to the appellant not exceeding £5·25, or may refuse to set aside the conviction, in which case the proceedings shall be returned to the clerk of the inferior court, and the appellant shall then be entitled to proceed with his appeal in the same way as if it had been marked on the date when the complaint and proceedings are returned to the clerk of the inferior court.

(4) Where proceedings are taken under this section, the preparation of the draft stated case shall be delayed pending the decision of the High Court.

(5) The power conferred by this section to consent to a conviction and sentence being set aside shall be exercisable—

(*a*) where the appeal is by stated case, at any time within 10 days after the receipt by the prosecutor of the draft stated case; and

(*b*) where the appeal is by suspension at any time within 10 days after the service on the prosecutor of the bill of suspension.

PART II

Convictions not to be quashed on certain grounds.

454.—(1) No conviction, sentence, judgment, order of court or other proceeding whatsoever under this Part of this Act shall be quashed for want of form or, where the accused had legal assistance in his defence, shall be suspended or set aside in respect of any objections to the relevancy of the complaint, or to the want of specification therein, or to the competency or admission or rejection of evidence at the trial in the inferior court, unless such objections shall have been timeously stated at the trial by the solicitor of the accused.

(2) Save as provided in sections 442 and 452 of this Act no conviction, sentence, judgment, order of court or other proceeding whatsoever shall be quashed except on the ground of incompetency, or corruption, or malice, or oppression, or unless the High Court shall be of opinion that the accused has been misled as to the true nature of the charge against him or been prejudiced in his defence on the merits, and that a miscarriage of justice has resulted thereby:

Provided that the High Court may amend any conviction, sentence, judgment, order of court or other proceeding, or may pronounce such other sentence, judgment, or order as they shall judge expedient.

Other modes of appeal.

455.—(1) The provisions regulating appeals shall, subject to the provisions of this Part of this Act, be without prejudice to any other mode of appeal competent.

(2) Any officer of law may serve any bill of suspension or other writ relating to an appeal.

Miscellaneous

Actions of damages in respect of proceedings under this Part of this Act.

456.—(1) No judge, clerk of court or prosecutor in the public interest shall be found liable by any court in damages for or in respect of any proceedings taken, act done, or judgment, decree or sentence pronounced under this Part of this Act, unless—

(*a*) the person suing has suffered imprisonment in consequence thereof; and

(*b*) such proceeding, act, judgment, decree or sentence has been quashed; and

(*c*) the person suing shall specifically aver and prove that such proceeding, act, judgment, decree or sentence was taken, done or pronounced maliciously and without probable cause.

(2) No such liability as aforesaid shall be incurred or found where such judge, clerk of court or prosecutor shall establish that the person suing was guilty of the offence in respect whereof he had been convicted, or on account of which he had been apprehended or had otherwise suffered, and that he had undergone no greater punishment than was assigned by law to such offence.

PART II

(3) No action to enforce such liability as aforesaid shall lie unless it is commenced within two months after the proceeding, act, judgment, decree or sentence founded on, or in the case where the Act under which the action is brought fixes a shorter period, within that shorter period.

(4) In this section "judge" shall not include "sheriff", and the provisions of this section shall be without prejudice to the privileges and immunities possessed by sheriffs.

Acts of Adjournal.

457. It shall be lawful for the High Court by Act of Adjournal—

(*a*) to make rules to give effect to any of the provisions of any enactment relating to summary criminal jurisdiction or procedure, including this Part of this Act and the Backing of Warrants (Republic of Ireland) Act 1965 and, without prejudice to the generality of this subsection, to make provision for the manner in which an accused person or witness may be cited in any proceedings under this Part of this Act; 1965 c. 45.

(*b*) to make rules regulating summary criminal procedure under any enactment, including this Part of this Act;

(*c*) to cancel or amend any of the forms of summary criminal procedure under any enactment, including this Part of this Act, or to provide additional forms.

PART III

GENERAL

Construction of enactments referring to sentence of detention.

458. In any enactment, any reference to a sentence of imprisonment as including a reference to a sentence of any other form of detention shall be construed as including a reference to a sentence of detention in a young offenders institution.

Construction of enactments referring to detention.

459. In any enactment, any reference to imprisonment as including any other form of detention shall be construed as including a reference to detention in a young offenders institution.

Transitional provisions and savings.

460.—(1) Without prejudice to the provisions of section 38 of the Interpretation Act 1889 (effect of repeals)—

(*a*) nothing in any repeal made by this Act shall affect any order or rule made, certificate issued, requirement or condition imposed or thing done under any enactment repealed by this Act, and every such order, rule, certificate, requirement, condition or thing shall, if in force at the commencement of this Act, continue in force 1889 c. 83.

PART III

(subject to the provisions of this Act) and be deemed to have been made, issued, imposed or done under the corresponding provisions of this Act; and

(*b*) any reference in any document (including an enactment) to any enactment repealed by this Act, whether a specific reference or a reference to provisions of a description which includes, or apart from any repeal made by this Act includes, the enactment so repealed, shall be construed as a reference to the corresponding enactment in this Act.

(2) Until 16th May 1975, any reference in this Act to a sheriff court district shall be construed as a reference to the county, city or place in which the sheriff court concerned has jurisdiction.

(3) Any reference in this Act to a form contained in an Act of Adjournal under this Act shall, until that Act of Adjournal comes into force, be construed as a reference to the appropriate form in use immediately before the coming into force of that Act of Adjournal.

(4) Nothing in this Act shall make it unlawful to detain an accused person in custody pending trial otherwise than in prison if such detention would have been lawful prior to the commencement of this Act.

(5) Nothing in this Act contained shall apply to the crimes of treason or rebellion against the Sovereign, or shall affect the procedure in any prosecution or trial for treason, or for rebellion against the Sovereign, but all procedure in the prosecution and trial of such crimes shall be conducted according to the existing law and practice.

(6) Where any provision in an Act of Adjournal has been repealed by this Act, the corresponding provision in this Act shall be subject to be varied or repealed by an Act of Adjournal under this Act.

(7) Any reference in any enactment or document to an enactment repealed by this Act shall, except where the context otherwise requires, be construed as, or as including, a reference to the corresponding provision in this Act.

(8) The enactment in this Act of the provisions set out in Schedule 8 to this Act (being re-enactments of provisions contained in Acts of Adjournal made in exercise of powers conferred by Acts of Parliament) shall be without prejudice to the validity of those re-enacted provisions, and any question as to their validity shall be determined as if the re-enacted provisions were contained in Acts of Adjournal made in exercise of those powers.

PART III
Consequential amendments, repeals and revocations.

461.—(1) The enactments specified in Schedule 9 to this Act shall have effect subject to the amendments set out in that Schedule, being amendments consequential on the preceding provisions of this Act, but the amendment of any enactment by that Schedule shall not be taken as prejudicing the operation of section 38 of the Interpretation Act 1889 (which relates to the effect of repeals). 1889 c. 63.

(2) The enactments specified in Part I of Schedule 10 to this Act (which include enactments which were obsolete, spent, unnecessary or superseded before the passing of this Act) are hereby repealed to the extent specified in the third column of that Part of that Schedule, and the Acts of Adjournal specified in Part II of that Schedule (which include enactments which were obsolete, spent, unnecessary or superseded before the passing of this Act) are hereby revoked to the extent specified in the third column of that Part of that Schedule.

Interpretation.

462.—(1) In this Act, except where the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them—

"appropriate court" means a court named as such in pursuance of section 183(2) or 384(2) of this Act or of Schedule 5 to this Act in a probation order or in an amendment of any such order made on a change of residence of a probationer;

"bail" includes any pledge lodged by or on behalf of an accused person as security for his appearance at any diet of court;

"Borstal training" and "detention centre" have the like meanings as in the Prisons (Scotland) Act 1952; 1952 c. 61.

"charged" means, in respect of proceedings under Part I of this Act, charged on petition or indictment and, in respect of proceedings under Part II of this Act, charged on complaint;

"child", except in sections 18, 62, 171(3), 294, 313 and 368(3) of this Act and Schedule 1 to this Act, has the meaning assigned to that expression by section 30 of the Social Work (Scotland) Act 1968; 1968 c. 49.

"children's hearing" has the meaning assigned to it by section 34(1) of the Social Work (Scotland) Act 1968;

"Clerk of Justiciary" shall include assistant clerk of justiciary and shall extend and apply to any person duly authorised to execute the duties of Clerk of Justiciary or assistant clerk of justiciary;

"commit for trial" means commit until liberation in due course of law;

"complaint" includes a copy of the complaint laid before the court;

PART III

" convicted " (except in relation to previous convictions), in respect of proceedings under Part I of this Act, means convicted on indictment, and, in respect of proceedings under Part II of this Act, means summarily convicted; and " conviction " shall be construed accordingly;

" the court ", in relation to solemn procedure, means a court of solemn criminal jurisdiction and includes the High Court and the sheriff court and, in relation to summary procedure, means a court of summary criminal jurisdiction;

" court of summary jurisdiction " means a court of summary criminal jurisdiction;

" court of summary criminal jurisdiction " shall include the sheriff court and district court;

" crime " means all crime at common law, as well as all crime under any existing or future Acts of Parliament, and includes high crime and offence, felony, crime and offence, offence and misdemeanour, and includes attempt;

" enactment " includes an enactment contained in a local Act and any order, regulation or other instrument having effect by virtue of an Act;

" England " includes Wales;

" existing " means existing immediately before the commencement of this Act;

" extract conviction " and " extract of previous conviction " include certified copy conviction, certificate of conviction, and any other document under the hand of the proper officer in use to be issued from any court of justice of the United Kingdom as evidence of a conviction;

" fine " includes an instalment of a fine;

" guardian ", in relation to a child, includes any person who, in the opinion of the court having cognizance of any case in relation to the child or in which the child is concerned, has for the time being the charge of or control over the child;

" guardianship order " has the meaning assigned to it by section 175(5) or 376(8) of this Act;

" High Court " and " Court of Justiciary " shall mean " High Court of Justiciary " and shall include any court held by the Lords Commissioners of Justiciary, or any of them;

PART III

" indictment " shall include any indictment whether in the sheriff court or the High Court framed in the form set out in Schedule A to the Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form ; 1887 c. 35.

" hospital " means—

(*a*) any hospital vested in the Secretary of State under the National Health Service (Scotland) Act 1947 ; 1947 c. 27.

(*b*) any private hospital registered under Part III of the Mental Health (Scotland) Act 1960 ; and 1960 c. 61.

(*c*) any State hospital ;

" hospital order " has the meaning assigned to it by section 175(3) or 376(6) of this Act ;

" impose detention " or " impose imprisonment " means pass a sentence of detention or imprisonment, as the case may be, or make an order for committal in default of payment of any sum of money or for failing to do or abstain from doing anything required to be done or left undone ;

" judge ", in relation to solemn procedure, means a judge of a court of solemn criminal jurisdiction and, in relation to summary procedure, means any sheriff or any judge of a district court ;

" justice " includes the sheriff and any stipendiary magistrate or justice of the peace ;

" justice of the peace " means any of Her Majesty's justices of the peace for any commission area in Scotland acting within such commission area ;

" legalised police cells " has the like meaning as in the Prisons (Scotland) Act 1952 ; 1952 c. 61.

" local authority " has the meaning assigned to it by section 1(2) of the Social Work (Scotland) Act 1968 ; 1968 c. 49.

" Lord Commissioner of Justiciary " shall include Lord Justice General and Lord Justice Clerk ;

" medical practitioner " means a registered medical practitioner within the meaning of the Medical Act 1956 ; 1956 c. 76.

PART III

"offence" means any act, attempt or omission punishable by law;

"officer of law" includes a constable within the meaning of the Police (Scotland) Act 1967, a sheriff officer, prison officer and any other person having authority to execute a warrant of court;

1967 c. 77.

"officer of police" includes a chief constable, deputy chief constable, constable and criminal officer;

"order" means any order, byelaw, rule or regulation having statutory authority;

"order restricting discharge" has the meaning assigned to it by section 178 or 379 of this Act;

"patient" means a person suffering or appearing to be suffering from mental disorder;

"place of safety", in relation to a person not being a child, means any police station, prison or remand centre, or any hospital the board of management of which are willing temporarily to receive him, and in relation to a child means a place of safety within the meaning of section 94(1) of the Social Work (Scotland) Act 1968;

1968 c. 49.

"prison" does not include a naval, military or air force prison;

"probationer" means a person for the time being under supervision by virtue of a probation order;

"probation order" has the meaning assigned to it by section 183 or 384 of this Act;

"probation period" means the period for which a probationer is placed under supervision by a probation order;

"procurator fiscal" shall mean sheriff's procurator fiscal, and shall include assistant procurator fiscal and procurator fiscal depute and shall extend and apply to any person duly authorised to execute the duties of such procurator fiscal;

"prosecutor", in Part I of this Act, includes Crown counsel, procurator fiscal, any other person prosecuting in the public interest and any private prosecutor; and, in Part II of this Act, includes procurator fiscal, district prosecutor, depute district prosecutor, assistant district prosecutor, and

PART III

any other person prosecuting in the public interest, private prosecutor, and complainer and any person duly authorised to represent or act for any public prosecutor;

"remand" means an order adjourning the proceedings or continuing the case and giving direction as to detention in custody or liberation during the period of adjournment or continuation and references to remanding a person or remanding in custody or on bail shall be construed accordingly;

"remand centre" has the like meaning as in the Prisons (Scotland) Act 1952; 1952 c. 61.

"reporter" means an officer appointed by a local authority under section 36 of the Social Work (Scotland) Act 1968; 1968 c. 49.

"residential establishment" has the same meaning as in the Social Work (Scotland) Act 1968;

"responsible medical officer" has the meaning assigned to it by section 53 of the Mental Health (Scotland) Act 1960; 1960 c. 61.

"sentence" includes an order for imprisonment pronounced by any court whether civil or criminal and an order for detention in a detention centre;

"sheriff" shall include sheriff principal;

"sheriff clerk" shall include sheriff clerk depute, and shall extend and apply to any person duly authorised to execute the duties of sheriff clerk;

"sheriff court district" shall extend to the limits within which the sheriff has jurisdiction in criminal matters whether by statute or at common law;

"State hospital" has the meaning assigned to it in Part VII of the Mental Health (Scotland) Act 1960;

"statute" shall mean any Act of Parliament, public general, local, or private, and any Provisional Order confirmed by Act of Parliament;

"supervision requirement" has the meaning assigned to it by section 44(1) of the Social Work (Scotland) Act 1968;

"training school order" has the same meaning as in the Social Work (Scotland) Act 1968;

"witness" includes haver.

PART III

(2) References in this Act to a court do not include references to a court-martial; and nothing in this Act shall be construed as affecting the punishment which may be awarded by a court-martial under the Naval Discipline Act 1957, the Army Act 1955 or the Air Force Act 1955 for a civil offence within the meaning of those Acts.

1957 c. 53.
1955 c. 18.
1955 c. 19.

(3) For the purpose of any provision of Part II of this Act referring to a court acting for any place, a court entitled to exercise jurisdiction in any place shall be deemed to be a court acting for that place.

(4) For the purposes of this Act, except section 183(7) or 384(7) thereof, where a probation order has been made on appeal, the order shall be deemed to have been made by the court from which the appeal was brought.

(5) Any reference in this Act to a previous sentence of imprisonment shall be construed as including a reference to a previous sentence of penal servitude; any such reference to a previous sentence of Borstal training shall be construed as including a reference to a previous sentence of detention in a Borstal institution.

(6) Any reference in this Act to a previous conviction or sentence shall be construed as a reference to a previous conviction by a court in any part of Great Britain and to a previous sentence passed by any such court.

(7) References in this Act to an offence punishable with imprisonment shall be construed, in relation to any offender, without regard to any prohibition or restriction imposed by or under any enactment, including this Act, upon the imprisonment of offenders of his age.

(8) Without prejudice to the provisions of section 171 or 368 of this Act, where the age of any person at any time is material for the purposes of any provision of this Act regulating the powers of a court, his age at the material time shall be deemed to be or to have been that which appears to the court, after considering any available evidence, to be or to have been his age at that time.

(9) References in this Act to findings of guilty and findings that an offence has been committed shall be construed as including references to pleas of guilty and admissions that an offence has been committed.

PART III

(10) For the purposes of sections 62 and 313 of this Act—

(*a*) any person who is the parent or legal guardian of a child or who is legally liable to maintain him shall be presumed to have the custody of him, and as between father and mother the father shall not be deemed to have ceased to have the custody of him by reason only that he has deserted, or otherwise does not reside with, the mother and the child;

(*b*) any person to whose charge a child is committed by any person who has the custody of him shall be presumed to have charge of the child;

(*c*) any other person having actual possession or control of a child shall be presumed to have the care of him.

(11) References in this Act to any enactment shall, unless the context otherwise requires, be construed as references to that enactment as amended, extended or applied by or under any other enactment, including this Act.

Extent.

463.—(1) The following provisions of this Act shall extend to England and Wales, that is to say—

(*a*) in Part I, sections 17, 169, 188(3) to (8) and 189;

(*b*) in Part II, sections 325, 326(2), 365, 370 (so far as relating to section 374), 374, 389(3) to (8) and 390;

(*c*) in Part III, section 463(1);

(*d*) in Schedule 9, the amendments relating to—

(i) the Magistrates' Courts Act 1952; 1952 c. 55.

(ii) the Criminal Justice Act 1961; 1961 c. 39.

(iii) section 26(2) of the Criminal Justice (Scotland) Act 1963; 1963 c. 39.

(iv) the Criminal Justice Act 1967; 1967 c. 80.

(v) the Children and Young Persons Act 1969; 1969 c. 54.

(vi) the Immigration Act 1971; 1971 c. 77.

(vii) the Criminal Justice Act 1972; and 1972 c. 71.

(viii) the Powers of Criminal Courts Act 1973. 1973 c. 62.

(*e*) in Schedule 10, the repeals relating to—

(i) sections 46, 50 and 54 of the Children and Young Persons (Scotland) Act 1937; 1937 c. 37.

(ii) sections 7 and 7A of the Criminal Justice (Scotland) Act 1949; 1949 c. 94.

(iii) sections 39, 40 and 53(1) of the Criminal Justice (Scotland) Act 1963;

PART III

(iv) section 54(8) of the Criminal Justice Act 1967;

1967 c. 80.

(v) Schedule 5 (other than paragraph 68 thereof) to the Children and Young Persons Act 1969; and

1969 c. 54.

(vi) sections 53 and 58(*a*) of, and paragraphs 3 and 19 of Schedule 5 to, the Powers of Criminal Courts Act 1973.

1973 c. 62.

(2) The following provisions of this Act shall extend to the Isle of Man, that is to say—

(*a*) in Part I, section 16;

(*b*) in Part II, section 324;

(*c*) in Part III, section 463(2);

(*d*) in Schedule 10, the repeal relating to section 53(3) of the Criminal Justice (Scotland) Act 1963.

1963 c. 39.

(3) Save as aforesaid, and except so far as it relates to the interpretation or commencement of the said provisions, this Act shall extend to Scotland only.

Short title and commencement.

464.—(1) This Act may be cited as the Criminal Procedure (Scotland) Act 1975.

(2) Subject to the following provisions of this section, this Act shall come into operation on 16th May 1975.

(3) Sections 23 and 329 of this Act shall come into operation on such day as Her Majesty may by Order in Council appoint.

(4) Sections 214 and 423 of this Act shall come into operation on such date as the Secretary of State may by order appoint; and any such order shall be made by statutory instrument.

(5) A statutory instrument containing an order under subsection (4) of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

SCHEDULES

SCHEDULE 1

Sections 14, 18, 62, 143, 167, 171, 294, 313, 323, 331, 348, 363, 364 and 368.

OFFENCES AGAINST CHILDREN UNDER THE AGE OF 17 YEARS TO WHICH SPECIAL PROVISIONS APPLY

(*a*) Any offence under the Criminal Law Amendment Act 1885. 1885 c. 69.

(*b*) Any offence in respect of a child under the age of 17 years which constitutes the crime of incest.

(*c*) Any offence under section 12, 13, 14, 15, 22 or 33 of the Children and Young Persons (Scotland) Act 1937. 1937 c. 37.

(*d*) Any other offence involving bodily injury to a child under the age of 17 years.

SCHEDULE 2

Section 99.

REMISSION OF FINES ON JURORS

1. Applications for remission of fines imposed at any sitting of the High Court received after the termination of such sitting shall be laid before any Lord Commissioner of Justiciary as soon as possible after receipt thereof.

2. No fees or dues of court or expenses shall be exigible in respect of any such application.

3. No such fine shall be reported by the Clerk of Justiciary or circuit clerk to the Queen's and Lord Treasurer's Remembrancer until the expiry of not less than three weeks from the conclusion of the last diet of the sitting of the High Court at which the fine has been imposed: and if, prior to that time, an application for remission of the fine shall have been received, no report shall be made to the Queen's and Lord Treasurer's Remembrancer until the application has been disposed of, and then only if the application be dismissed or refused as aftermentioned.

4. In case the judge dealing with any such application shall be of opinion that, having regard to the circumstances disclosed, the said application has not been brought within a reasonable time, he may dismiss the application. Otherwise he shall deal with the application on its merits and may grant the same and remit the fine or refuse the same, according as he is, or is not, satisfied, after such further inquiry, if any, as he may think proper, that the reasons adduced are vouched to his satisfaction and afford sufficient excuse for non-attendance.

5. A record of all such applications shall be entered in short form in the High Court minute books and the application with relative order thereon—but not containing the medical certificate or particulars attached thereto—shall be appended to the books of adjournal.

SCH. 2

6. Medical certificates and reasons for non-attendance as jurors either (*a*) submitted after citation or (*b*) lodged with the said application, may be destroyed on the expiry of one month after the date of the sitting of the court to which they refer.

Section 100.

SCHEDULE 3

COMPOSITION OF JURIES

Summoning of Jurors.—Lists of Assize

1. Where a list of assize falls to be returned upon requisition of the Clerk of Justiciary for a criminal trial in which the second diet is to be held before the High Court, or falls to be prepared by the clerk of the district where the second diet is to be held in cases in which the second diet is to be in a sheriff court, the following provisions shall apply, namely:—

(*a*) Where according to the existing law and practice the number of jurors in any list to be requisitioned by the Clerk of Justiciary would not exceed 45 in the case of a sitting of the High Court, the Clerk shall make requisition for a return of such a number of jurors—not exceeding 90, nor fewer than 60 where 45 would be requisitioned, and in the like proportion in other cases—as he may deem requisite: and the sheriffs responsible for making the return shall return such increased number accordingly, returning as nearly as possible the names of men and women equally.

(*b*) Where a number of jurors in excess of the numbers specified in the preceding subparagraph is to be requisitioned, the Act of Adjournal or the Lord Commissioner of Justiciary making the direction for the return shall specify the number of jurors to be returned; and of the number so specified, men and women respectively shall be returned as nearly as may be equally.

(*c*) The provisions of this Act regulating the proportions in which jurors are to be drawn from the various districts included in any area for which a return is made by a sheriff, shall extend to and be observed in the return of women as well as of men.

(*d*) In making his return the sheriff shall group the men and women respectively returned by him separately, by placing their names in different columns, or in some other convenient manner.

(*e*) The clerk charged with the preparation of any list of assize for a trial of which the second diet is appointed to be held in a sheriff court, shall, in preparing the same, include such equal number of women as of men therein as shall seem to him to be reasonably sufficient to ensure the attendance of a number of jurors of each sex so as to provide a jury of that sex only, if such should be required for the trial of such case or cases.

(*f*) A husband and wife shall not be returned in any case on the same list of assize.

Jury of Men only, or of Women only SCH. 3

2. Any application by a prosecutor or by the accused in terms of section 100 of this Act for a jury of men only, or of women only, must be made at the first (pleading) diet immediately after the recording of a plea or pleas of "not guilty" (or where no plea is taken because of preliminary objections held by the sheriff not to be frivolous, then immediately after such objections have been certified by the sheriff under section 105 of this Act or otherwise disposed of by him). An entry recording the making of the application shall be entered on the record copy of the indictment, and signed by the presiding sheriff.

3. If the second diet is appointed to be held in the sheriff court, and the judge presiding at the first diet is a sheriff having jurisdiction to try the case, he may, if so advised, forthwith deal with the application in the manner in which as hereinafter provided it may be dealt with by a judge of the court of the second diet, or he may at his own instance make an order as to the composition of the jury in respect of sex conform to the said subsection, and in that case his decision shall be recorded as aforesaid and shall be final; or he may reserve consideration for the question to be dealt with as aftermentioned.

4. In all cases in which such an application shall be made as hereinbefore provided for, but not dealt with by the judge presiding at the first diet in terms of the immediately preceding paragraph after transmission of the record copy of the indictment in terms of section 103 or 105 of this Act, or on receipt of the telegraphic intimation of the presentation of an application hereinafter provided for, the Clerk of Justiciary, or the clerk of the court of the second diet, shall on the third lawful day after the date of the first diet submit the report of the proceedings at the first diet to a Lord Commissioner of Justiciary, or, where the second diet is in a sheriff court, to a sheriff having jurisdiction to try the case, who shall deal with it as follows:

(*a*) The application shall be disposed of by him summarily, in court, or in chambers, after such intimation to parties, enquiry, or hearing (if any) as to him shall seem just, by order granting or refusing the same, which order shall be entered on the record copy of the indictment and signed by the judge making it, and shall be final: provided, however, that if any party (including any person accused in the same indictment as the applicant) shall have given notice, either at the time of making the application or by letter received by the clerk before the proceedings are reported to the judge, intimating that he desires to be heard in support of or against the application, then the judge shall not proceed to dispose of the application without giving the party who has so given notice, or his agent, such intimation and opportunity of being heard by counsel or by an agent qualified to practise in the court of the second diet as shall seem to him to be

SCH. 3

reasonable in the circumstances. But nothing herein contained shall confer any right on the accused to be personally present at the disposal of the application.

(*b*) Where owing to defective postal facilities or other cause the record copy of the indictment appointed under this Act to be transmitted to the Clerk of Justiciary or the clerk of the district of the court of the second diet shall not be in the hands of the said clerk on the morning of the third lawful day after the first diet, the procedure hereinbefore directed to be taken before a judge on said third lawful day may competently proceed upon telegraphic or telephonic intimation given to the clerk of court of the proceedings at the first diet bearing upon—

(i) the plea recorded (if any);

(ii) any application then made for a jury of one sex only; and

(iii) any special defence of which notice may have been given;

and in that case any order by the judge may, pending receipt of the record copy of the indictment, be made and signed by the judge making it on a separate copy of the indictment or in the books of the court, but shall afterwards be endorsed on the record copy of the indictment.

(*c*) Where having regard to the usual course of post, or to any exceptional circumstances existing at the time, there is reason to believe that the record copy of the indictment may not reach the said clerk by the morning of the third day after the first diet, it shall be the duty of the clerk of the court of the first diet to send to the said clerk for the second diet by telegraph or telephone intimation in terms of the preceding subparagraph immediately after the first diet.

5. Notwithstanding anything herein contained, it shall nevertheless be competent, in any case in which no such application has been made and disposed of as hereinbefore provided for, for the judge appointed to preside at the trial of the case, at any stage prior to the empanelling of the jury to make an order, if in his discretion he shall think proper so to do, that the jury for trial of the case shall be composed of men only or of women only, subject always to the condition that no such order shall be made or take effect unless there are a sufficient number of men or women (as the case may be) on the assize list and present and available to form a jury of the composition contemplated.

Summoning of Jurors.—Citation

6.—(1) If, prior to the date of citation of the jurors for any diet, an order shall have been made directing that all the cases appointed for trial at such diet shall be tried by a jury or juries composed of men only, or of women only, as the case may be, the clerk of court may reduce the list of assize by striking out the names of the persons of the other sex from the list of assize, and it shall not be necessary to cite any of these persons as jurors.

(2) Where no such application as is hereinbefore provided for in respect of any of the cases appointed for trial at a sitting to which any list of assize applies has been made at the first diet, the clerk of court may forthwith reduce the list of assize to such number as would fall to be cited according to former law and practice. This he shall do by striking out of the list of assize the names of men and women, in equal numbers so far as may be, commencing with the names lowest on the list returned for each district, and only the assizors whose names remain on the list when so reduced shall be cited. Provided, however, that if intimation shall have been given of any special defence which shall appear to the clerk of court to be of such a nature as to involve enquiry into an issue which may be suited for trial before a jury of persons of one sex only, he shall, before proceeding to reduce the list of assize take the instructions of a judge competent to try the case.

(3) Where applications have been made at the first diet as hereinbefore provided for in any cases appointed for trial at any such sitting and these applications shall all have been dealt with and refused prior to the date of citation of the jury, the clerk of court shall, upon the refusal of said applications, proceed as provided in the preceding subparagraph.

(4) In all other cases (subject to the provisions of section 97 of this Act as to summoning only so many jurors as may be necessary), the persons whose names appear on the list of assize shall be summoned, men and women equally.

(5) Where, owing to change of circumstances, by reason of the withdrawal of charges or otherwise, after the citation of jurors the conditions are found to be such that if they had existed prior to the citation the provisions of subparagraphs (1), (2) or (3) of this paragraph would have been applicable, the clerk of court may thereupon, notwithstanding citation, proceed to reduce the list of assize as in these subparagraphs provided for, and to countermand the citations of those jurors whose names are struck out of the list when reduced.

(6) In this paragraph "clerk of court" shall mean and include the clerk of court of the second diet, and in cases in which the second diet is before a sheriff, the sheriff-clerk of the district of the court of the second diet, and in any case falling to be tried in the High Court, the Clerk of Justiciary.

(7) Jurors whose names are struck out in reducing the list of assize, or whose citations are countermanded as above provided for shall be liable to future service as jurors as if their names had not been included in the particular list of assize.

Selection of Jurors from the Panel

7.—(1) Where any case shall be remitted to an assize in which an order shall have been made as aforesaid that it shall be tried before a jury composed of men only or of women only, then in balloting for the jury in that case there shall be placed in the box or glass used for containing the slips of the names of jurors (as provided in section 129 of this Act) the slips containing the names of all the

SCH. 3

jurors who have been summoned; but in balloting for the jury, persons whose names shall be drawn who are not of the sex of which the jury has been directed to be composed, shall be passed over and not called on to serve on that particular jury; but the jury shall consist of the 15 persons of the sex of which it has been ordered to be composed whose names shall be first drawn and who shall not be successfully challenged. The slips containing the names of persons passed over under this provision shall be laid aside and returned to the ballot glass before another jury is balloted for.

(2) Where no order such as is mentioned in the preceding sub-paragraph shall have been made, then the names of all the persons appearing on the list of assize and summoned to attend shall be placed in the box or glass irrespective of whether they are men or women; and the ballot shall be carried through according to the method presently in use without distinguishing between men and women.

Exemptions

8. Any woman summoned to serve on a jury shall be entitled to apply to be exempted from service on account of pregnancy or other feminine condition or ailment, subject to the following conditions:—

(*a*) Application for exemption shall be made by her to the clerk of the court in which the second diet is to be called, or in any case in the High Court to the Clerk of Justiciary, as soon as may be after receipt of the citation, and unless on special cause shown not later than the third day before the date of said diet, and the same shall be supported by evidence (by a medical certificate or otherwise) vouching to the satisfaction of the said clerk that the applicant is or will be, by reason of pregnancy or some other feminine condition or ailment, unfit to attend and serve as a juror at the trial.

(*b*) Applications duly made as herein provided for shall be dealt with by the said clerk, who shall have power to dispose of them after such consultation with a judge competent to try the case as he may think necessary. Intimation of the granting or refusal of the application shall be made to the applicant by the clerk.

(*c*) Any such juror whose application for exemption is granted shall as regards liability for future jury service be in the same position as if she had not been included in the list of the assize on which she is exempted from serving.

9. Every citation upon a woman to attend as a juror shall contain a notification as nearly as may be in terms of the appropriate form contained in an Act of Adjournal under this Act.

10. Nothing herein contained shall prejudice—

(*a*) the right of the judge presiding at any trial at any time before the jury is empanelled to grant exemption in his discretion to a woman from serving as a juror in any case in respect of any of the reasons provided for in section 100 of this Act; nor

(*b*) any power presently exercised by any clerk of court or the Clerk of Justiciary, or by any judge presiding at a trial, to excuse at any time any person summoned to attend as a juror from attendance. SCH. 3

SCHEDULE 4

Sections 143 and 348.

ENACTMENTS REFERRED TO IN SECTIONS 143 AND 348 OF THIS ACT

Session and Chapter	Short Title	Enactments referred to
2 Edw. 7. c. 11.	The Immoral Traffic (Scotland) Act 1902.	Proceedings for any offence under the Act.
9 & 10 Geo. 6. c. 67.	The National Insurance Act 1946.	Section 53(5).
11 & 12 Geo. 6. c. 29.	The National Assistance Act 1948.	Section 51.
8 & 9 Eliz. 2. c. 61.	The Mental Health (Scotland) Act 1960.	Section 96.
1966 c. 20.	The Ministry of Social Security Act 1966.	Section 33(6).
1967 c. 34.	The Industrial Injuries and Diseases (Old Cases) Act 1967.	Section 11(5).

SCHEDULE 5

Sections 183, 185, 384 and 386.

DISCHARGE AND AMENDMENT OF PROBATION ORDERS

Discharge

1. A probation order may on the application of the officer supervising the probationer or of the probationer be discharged—

(*a*) by the appropriate court, or

(*b*) if no appropriate court has been named in the original or in any amending order, by the court which made the order.

Amendment

2.—(1) If the court by which a probation order was made, or the appropriate court is satisfied that the probationer proposes to change or has changed his residence from the area of a local authority named in the order to another area of a local authority, the court may, and if application is made in that behalf by the officer supervising the probationer shall, by order, amend the probation order by—

(*a*) substituting for the area named therein that other area, and

(*b*) naming the appropriate court to which all the powers of the court by which the order was made shall be transferred and shall require the local authority for that other area to arrange for the probationer to be under the supervision of an officer of that authority.

SCH. 5

(2) The court to be named as the appropriate court in any amendment of a probation order in pursuance of the last foregoing sub-paragraph shall be a court exercising jurisdiction in the place where the probationer resides or is to reside and shall be a sheriff court or district court according to whether the probation order was made by a sheriff court or district court:

Provided that—

(i) if there is no district court exercising jurisdiction in the said place the court to be so named shall be the sheriff court; and

(ii) if the probation order contains requirements which in the opinion of the court cannot be complied with unless the probationer continues to reside in the local authority area named in the order, the court shall not amend the order as aforesaid, unless in accordance with the following provisions of this Schedule, it cancels those requirements or substitutes therefor other requirements which can be so complied with.

(3) Where a probation order is amended under this paragraph, the clerk of the court amending it shall send to the clerk of the appropriate court four copies of the order together with such documents and information relating to the case as the court amending the order considers likely to be of assistance to the appropriate court, and the clerk of that court shall send one copy of the probation order to the local authority of the substituted local authority area and two copies to the officer supervising the probationer one of which the supervising officer shall give to the probationer.

(4) The foregoing provisions of this paragraph shall, in a case where the probation order was made by the High Court, have effect subject to the following modifications—

(*a*) the court shall not name an appropriate court, but may substitute for the local authority named in the order, the local authority for the area in which the probationer is to reside;

(*b*) the Clerk of Justiciary shall send to the director of social work of that area in which the probationer is to reside three copies of the amending order together with such documents and information relating to the case as is likely to be of assistance to the director, and the director shall send two copies of the amending order to the officer supervising the probationer, one of which the supervising officer shall give to the probationer.

3. Without prejudice to the provisions of the last foregoing paragraph, the court by which a probation order was made or the appropriate court may, upon application made by the officer supervising the probationer or by the probationer, by order amend a probation order by cancelling any of the requirements thereof or by inserting therein (either in addition to or in substitution for any such requirement) any requirement which could be included in the

order if it were then being made by that court in accordance with the provisions of sections 183, 184, 384 and 385 of this Act:

Provided that—

(*a*) the court shall not amend a probation order by reducing the probation period, or by extending that period beyond the end of three years from the date of the original order;

(*b*) the court shall not so amend a probation order that the probationer is thereby required to reside in any institution or place, or to submit to treatment for his mental condition, for any period or periods exceeding 12 months in all;

(*c*) the court shall not amend a probation order by inserting therein a requirement that the probationer shall submit to treatment for his mental condition unless the amending order is made within three months after the date of the original order.

4. Where the medical practitioner by whom or under whose direction a probationer is being treated for his mental condition in pursuance of any requirement of the probation order is of opinion—

(*a*) that the treatment of the probationer should be continued beyond the period specified in that behalf in the order; or

(*b*) that the probationer needs different treatment, being treatment of a kind to which he could be required to submit in pursuance of a probation order; or

(*c*) that the probationer is not susceptible to treatment; or

(*d*) that the probationer does not require further treatment,

or where the practitioner is for any reason unwilling to continue to treat or direct the treatment of the probationer, he shall make a report in writing to the effect to the officer supervising the probationer and the supervising officer shall apply to the court which made the order or to the appropriate court for the variation or cancellation of the requirement.

General

5. Where the court which made the order or the appropriate court proposes to amend a probation order under this Schedule, otherwise than on the application of the probationer, it shall cite him to appear before the court; and the court shall not amend the probation order unless the probationer expresses his willingness to comply with the requirements of the order as amended:

Provided that this paragraph shall not apply to an order cancelling a requirement of the probation order or reducing the period of any requirement, or substituting a new area of a local authority for the area named in the probation order.

6. On the making of an order discharging or amending a probation order, the clerk of the court shall forthwith give copies of the discharging or amending order to the officer supervising the probationer; and the supervising officer shall give a copy to the probationer and to the person in charge of any institution in which the probationer is or was required by the order to reside.

Section 195.

SCHEDULE 6

FINES ON INDICTMENT—PAYMENT BY INSTALMENTS

1. Where a court imposes a fine on a person convicted on indictment such person may apply to that court for an order for payment of the fine by instalments, and where, either at the time said fine was imposed or at any subsequent time, such an order has been made, may at any time thereafter, before imprisonment has followed on the sentence, apply to that court to vary the order.

2. An application, other than one made at the time the fine was imposed, shall be made in the case of a fine imposed in the High Court to the Clerk of Justiciary, and in the sheriff court to the sheriff clerk of the court by which the fine was imposed; and such application may be accompanied by a statement in writing setting forth the reasons therefor and any proposals the applicant may have for the payment of the fine by instalments or for variation of the order for payment of the fine by instalments, as the case may be.

3. Where an application has been made as aforesaid, the Clerk of Justiciary or sheriff clerk, as the case may be, shall lay it before any judge or the sheriff of the court which imposed the fine, either in court or in chambers; and the said judge or sheriff may dispose of the application without requiring the attendance of the accused.

4. The determination of any such application shall be entered in the minutes of proceedings of the trial by the clerk of court; and where an application is made to a sheriff court which is not the court having custody of the record copy indictment and such minutes, the sheriff clerk shall obtain the same from the court having custody thereof, and shall, after the application has been disposed of, return the record copy indictment and minutes to that court.

Section 409.

SCHEDULE 7

APPLICATION OF SUMS PAID AS PART OF FINE UNDER SECTION 409 OF THIS ACT

All sums paid under section 409 of this Act shall be handed over on receipt by the governor of the prison, as defined in the said section, to the clerk of the court in which the conviction was obtained, and thereafter paid and applied pro tanto in the same manner and for the same purposes as sums adjudged to be paid by the conviction and sentence of the court, and paid and recovered in terms thereof, are lawfully paid and applied.

Section 460.

SCHEDULE 8

PROVISIONS OF THIS ACT REFERRED TO IN SECTION 460(8) OF THIS ACT

The following are the provisions of this Act referred to in section 460(8) of this Act:—

section 70	section 242	section 274(4)
section 98 proviso	section 243	section 275
section 125	section 244	section 276
section 132(2)	section 246	section 277
section 153(3)	section 248	section 278

			SCH. 8
section 156(1) to (4) and (6)	section 249	section 316	
section 157	section 250	section 317	
section 203	section 251	section 318	
section 217(2) and (3)	section 253	section 319	
section 225	section 257	section 395(3) to (7)	
section 229	section 259	section 396(3)	
section 232	section 260	section 397	
section 233	section 261	section 398(4) and (5)	
section 234	section 264	section 400(7) and (8)	
section 235	section 265	section 404	
section 236	section 267	section 446(3)	
section 237(2) to (4)	section 269	Schedule 2	
section 239	section 270(2) to (4)	Schedule 3	
section 241	section 272	Schedule 6	
	section 273	Schedule 7	

SCHEDULE 9

Section 461.

AMENDMENT OF OTHER ENACTMENTS

The Jurors (Scotland) Act 1825

(1825 c. 22)

1. In section 7, for the words from the beginning to "case may be" there shall be substituted the words "The Court of Session may by Act of Sederunt", and for the words from "those courts" to "Edinburgh" there shall be substituted the words "that court".

2. In section 10, for the words "court whatsoever" there shall be substituted the words "civil court".

3. In section 13, after the word "several" there shall be inserted the words "civil jury".

4. In section 19, after the word "several" there shall be inserted the word "civil".

The Criminal Law (Scotland) Act 1830

(1830 c. 37)

5. In section 7, for the words from "cause" to "criminal" there shall be substituted the words "civil cause or proceeding".

The Interpretation Act 1889

(1889 c. 63)

6. In section 13(8), at the end there shall be added the words "and shall include Part II of the Criminal Procedure (Scotland) Act 1975 and any Act amending that Part of that Act".

The Children and Young Persons (Scotland) Act 1937

(1937 c. 37)

7. In section 57(3), for the words "this section" there shall be substituted the words "section 206 of the Criminal Procedure (Scotland) Act 1975".

8. In section 58A(2), for the words "this section" there shall be substituted the words "section 413 of the Criminal Procedure (Scotland) Act 1975".

SCH. 9

9. In section 62(*b*), for the words from "subsection (2)" to the end there shall be substituted the words "subsection (2) of section 206 of the Criminal Procedure (Scotland) Act 1975; or".

10. In section 87, in subsections (1) and (3), after the words "Act 1963" there shall be inserted the words "and of the Criminal Procedure (Scotland) Act 1975", and for the words "section 58A of this Act" there shall be substituted the words "section 413 of the said Act of 1975".

11. In section 105(1), for the words from "provided" to the end of the subsection, there shall be substituted the words "provided by the Criminal Procedure (Scotland) Act 1975".

12. In section 110(1), the definitions of "commit for trial" and "remand" shall be omitted.

The Law Officers Act 1944
(1944 c. 25)

13. In section 2, in the proviso, at the end there shall be added the words "or section 42 of the Criminal Procedure (Scotland) Act 1975".

The Criminal Justice (Scotland) Act 1949
(1949 c. 94)

14. In section 42(2), for the words "the Summary Jurisdiction (Scotland) Act 1908" there shall be substituted the words "Part II of the Criminal Procedure (Scotland) Act 1975".

The Magistrates' Courts Act 1952
(1952 c. 55)

15. In section 72B—

(*a*) in subsection (1), for the words from "section 44" to "Act 1954" and the words "Act of 1954" there shall be substituted respectively the words "section 403 of the Criminal Procedure (Scotland) Act 1975" and "Act of 1975";

(*b*) in subsection (2), for the words "section 49(1) of the said Act of 1954" there shall be substituted the words "section 407 of the said Act of 1975"; and

(*c*) in subsection (3), for the words from "section 44" to "Act 1954" and the words "Act of 1954" there shall be substituted respectively the words "the said section 403" and "Act of 1975".

The Prisons (Scotland) Act 1952
(1952 c. 61)

16. In section 32(2), after the words "Act of 1963" there shall be inserted the words "and of the Criminal Procedure (Scotland) Act 1975".

The Mental Health (Scotland) Act 1960
(1960 c. 61)

17. In section 58(1), after the words "hospital order" there shall be inserted the words "made under section 175 or 376 of the Criminal Procedure (Scotland) Act 1975".

18. In section 58(2), after the word " order " there shall be inserted the words " made under the said section 175 or 376 ".

19. In section 58(4), for the words " subsection (4) of section sixty of this Act " there shall be substituted the words " section 178(3) or 379(3) of the said Act of 1975 ".

20. In section 59(2), for the words " said period of twenty-eight days " there shall be substituted the words " period of 28 days referred to in section 58(1) of this Act ".

21. In section 60(3), after the word " discharge " there shall be inserted the words " made under section 178 or 379 of the Criminal Procedure (Scotland) Act 1975 ".

22. In section 60(5), for the words " the last foregoing subsection " there shall be substituted the words " section 178(3) or 379(3) of the said Act of 1975 ".

23. In section 64(3), for the words from " subsection " to the end there shall be substituted the words " section 174(3) of the Criminal Procedure (Scotland) Act 1975 ".

24. In section 66(7)(*a*), for the words from " section 63 " to " Act 1926 " there shall be substituted the words " section 174 or 255 of the Criminal Procedure (Scotland) Act 1975 ".

25. In section 67, in subsection (1), after the words " set out in " there shall be inserted the words " subsection (3) of ", and in subsection (2), for the words " the said section sixty " there shall be substituted the words " section 178 or 379 of the Criminal Procedure (Scotland) Act 1975 ".

26. In section 68, in subsection (1), for the words " this Part of this Act " there shall be substituted the words " section 175, 178, 376 or 379 of the Criminal Procedure (Scotland) Act 1975 ", and in subsection (3)(*a*), for the words from " subsection " to " Act " there shall be substituted the words " section 175(7) or 376(10) of the said Act of 1975 ".

27. In section 72(3), the words " and (4) " shall be omitted, and after the word " sixty-one " there shall be inserted the words " and in section 178(3) or 379(3) of the Criminal Procedure (Scotland) Act 1975 ".

28. In section 111(1), in the definition of " hospital order " and " guardianship order ", for the words " section fifty-five of this Act " there shall be substituted the words " section 175 or 376 of the Criminal Procedure (Scotland) Act 1975 ".

29. In section 111(4), after the words " Part V of this Act " there shall be inserted the words " or under section 174, 175, 178, 375, 376 or 379 of the Criminal Procedure (Scotland) Act 1975 ", and after the words " the said Part V " there shall be inserted the words " or any of the provisions of the said sections ".

The Criminal Justice Act 1961
(1961 c. 39)

30. In section 32(2), after paragraph (*h*) there shall be inserted the following paragraph—

" (*i*) sections 214 and 423 of the Criminal Procedure (Scotland) Act 1975 ".

SCH. 9

The Criminal Justice (Scotland) Act 1963
(1963 c. 39)

31. In section 2(1), in paragraph (*d*), after the words "Act 1963" there shall be inserted the words "or the Criminal Procedure (Scotland) Act 1975".

32. In section 9(2), after the words "purposes of this Act" there shall be inserted the words "and of the Criminal Procedure (Scotland) Act 1975".

33. In section 10(3), after the words "this Act" there shall be inserted the words "and of the Criminal Procedure (Scotland) Act 1975".

34. In section 11(1) and in proviso (*b*) to section 11(2), for the words "section 7 of this Act" there shall be substituted the words "section 209 or 418 of the Criminal Procedure (Scotland) Act 1975".

35. In section 26(2), paragraph (*a*) shall be omitted, and for the words from 'the section" to "that Schedule" there shall be substituted the words "the sections set out in Part II of Schedule 3 to this Act".

36. In Schedule 1, in paragraph 11, for the words "paragraphs 4 to 7" there shall be substituted the words "sections 214(1) to (6) and 423(1) to (6) of the Criminal Procedure (Scotland) Act 1975", and for the words from "substituted sub-paragraphs" to the end there shall be substituted the words "substituted paragraphs (*a*) and (*b*) of section 214(2) or 423(2) of the said Act of 1975".

37. In Schedule 1, in paragraph 13, for the words from "paragraph 8" to "this Schedule" there shall be substituted the words "section 214(7) or 423(7) of the Criminal Procedure (Scotland) Act 1975 (and, if that person is released from such a prison under the said section 214(7) or 423(7), paragraph 2 of this Schedule)".

38. In Schedule 1, in paragraph 14, after the word "Schedule" there shall be inserted the words "or section 214 or 423 of the Criminal Procedure (Scotland) Act 1975".

39. In Schedule 1, in paragraph 15, for the words "Part I of this Schedule" there shall be substituted the words "section 214 or 423 of the Criminal Procedure (Scotland) Act 1975".

The Criminal Justice Act 1967
(1967 c. 80)

40. In section 61(4)(*a*), for the words "section 57 and 57(2) of the Children and Young Persons (Scotland) Act 1937" there shall be substituted the words "section 206 and 206(2) of the Criminal Procedure (Scotland) Act 1975".

41. In section 62, in subsections (9) and (10), after the words "this section" there shall be inserted the words "or section 213(1) or 422(1) of the Criminal Procedure (Scotland) Act 1975", and in subsection (11), for the words from "or section" to "crimes)" there shall be substituted the words "(young offenders convicted of grave crimes) or section 206 of the said Act of 1975 (Punishment of person under 18),".

SCH. 9

The Social Work (Scotland) Act 1968
(1968 c. 49)

42. In section 37, in subsection (2), for the words from " Children " to " that Act " there shall be substituted the words " Criminal Procedure (Scotland) Act 1975 or any offence under section 21(1) of the Children and Young Persons (Scotland) Act 1937 ", and in subsection (4), for the words from " section 40(3) " to " 1937 " there shall be substituted the words " section 14(1), 296(3) or 323(1) of the said Act of 1975 ".

43. In section 56(5), for the words " as aforesaid " there shall be substituted the words " under section 173 or 372 or 373 of the Criminal Procedure (Scotland) Act 1975 ".

44. In section 57(2), for the words " the foregoing subsection " there shall be substituted the words " 373 of the Criminal Procedure (Scotland) Act 1975 ".

The Children and Young Persons Act 1969
(1969 c. 54)

45. In Schedule 5, in paragraph 53, for the words " The said sections 39 and 49 " there shall be substituted the words " Sections 39 and 49 of the principal Act ", and for the words " sections 46 and 54 " wherever those words occur there shall be substituted the words " section 46 ".

46. In Schedule 5, in paragraph 78, for the words from " section 58A " to the words " that section " there shall be substituted the words " section 413 of the Criminal Procedure (Scotland) Act 1975 and is not released under section 58A(3) of the said Act of 1937 ".

The Immigration Act 1971
(1971 c. 77)

47. In section 6(2), for the words " section 26 of the Criminal Justice (Scotland) Act 1949 " there shall be substituted the words " section 179 or 380 of the Criminal Procedure (Scotland) Act 1975 ".

The Criminal Justice Act 1972
(1972 c. 71)

48. In section 24, for subsection (4) there shall be substituted the following subsection—

" (4) References in this section to facilitating the commission of an offence include references 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."

49. In section 51(2), for the words " section 39(1) of the Criminal Justice (Scotland) Act 1963 " there shall be substituted the words " sections 17(1) and 325(1) of the Criminal Procedure (Scotland) Act 1975 ".

SCH. 9

The Powers of Criminal Courts Act 1973
(1973 c. 62)

50. In section 10—

(*a*) in subsection (3)(*a*), for the words from "subsection (2)" to "Act 1949" there shall be substituted the words "section 184(2) or 385(2) of the Criminal Procedure (Scotland) Act 1975", and after the words "Act and" there shall be inserted the words "section 184 or 385";

(*b*) in subsection (3)(*b*), for the words "section 3" there shall be substituted the words "section 184 or 385", and for the words "virtue of section 3" there shall be substituted the words "virtue of section 184 or 385";

(*c*) in subsection (4), for the words from "Criminal" to "and 6" there shall be substituted the words "Criminal Procedure (Scotland) Act 1975, except sections 186(2)(*b*), 187, 387(2)(*b*) and 388", and for the words "section 2" there shall be substituted the words "section 183 or 384";

(*d*) in subsections (5) and (6), for the words from "Criminal" to "1949" there shall be substituted the words "Criminal Procedure (Scotland) Act 1975"; and

(*e*) in subsection (8), for the words from "section 7" to "1949" there shall be substituted the words "section 188 or 389 of the Criminal Procedure (Scotland) Act 1975", and for the words "section 2" there shall be substituted the words "section 183 or 384".

The Health and Safety at Work etc. Act 1974
(1974 *c.* 37)

51. In section 34(5)(*b*), for the words "23(2) of the Summary Jurisdiction (Scotland) Act 1954" there shall be substituted the words "331(3) of the Criminal Procedure (Scotland) Act 1975".

SCHEDULE 10

Section 461.

REPEALS AND REVOCATIONS

PART I

ENACTMENTS REPEALED

Session and Chapter	Short Title	Extent of Repeal
1587 c. 54.	The Jurors Act 1587.	Section 10.
1587 c. 57.	The Criminal Justice Act 1587.	Sections 10 and 11.
1672 c. 40.	The Courts Act 1672.	Section 3. Section 8. Section 10.
1693 c. 43.	The Criminal Procedure Act 1693.	The whole Act.
1701 c. 6.	The Criminal Procedure Act 1701.	The words from "Our Sovereign" to "void and null".
54 Geo. 3. c. 67.	The Justiciary Courts (Scotland) Act 1814.	Sections 1 to 4.
6 Geo. 4. c. 22.	The Jurors (Scotland) Act 1825.	Sections 8 and 9. In section 14, the proviso. Sections 15 and 16. Section 17, so far as relating to criminal trials. Section 18. Section 20.
7 Geo. 4. c. 8.	The Juries (Scotland) Act 1826.	Sections 4 and 5 so far as relating to returns to criminal courts.
9 Geo. 4. c. 29.	The Circuit Courts (Scotland) Act 1828.	Section 2. Section 5. Section 7. Section 10. Section 12. Section 14. Section 17. Section 21. Section 23.
11 Geo. 4 & 1 Wm. 4. c. 37.	The Criminal Law (Scotland) Act 1830.	Section 8. Section 12.
1 & 2 Vict. c. 119.	The Sheriff Courts (Scotland) Act 1838.	Section 25.
3 & 4 Vict. c. 59.	The Evidence (Scotland) Act 1840.	Sections 1, 3 and 4 so far as relating to criminal proceedings.
11 & 12 Vict. c. 79.	The Justiciary (Scotland) Act 1848.	Section 4. Section 7. Sections 11 and 12.
15 & 16 Vict. c. 27.	The Evidence (Scotland) Act 1852.	Sections 1, 3 and 4 so far as relating to criminal proceedings.
16 & 17 Vict. c. 80.	The Sheriff Courts (Scotland) Act 1853.	Section 34.
31 & 32 Vict. c. 95.	The Court of Justiciary (Scotland) Act 1868.	Section 1. Section 10. Section 16. Section 18.
50 & 51 Vict. c. 35.	The Criminal Procedure (Scotland) Act 1887.	Sections 1 and 2. In section 3, the words from "and all indictments" to the end of the section. Sections 4 to 44. Sections 47 to 76.

SCH. 10

Session and Chapter	Short Title	Extent of Repeal
51 & 52 Vict. c. 36.	The Bail (Scotland) Act 1888.	The whole Act.
61 & 62 Vict. c. 36.	The Criminal Evidence Act 1898.	The whole Act, except so far as relating to courts-martial.
7 Edw. 7. c. 51.	The Sheriff Courts (Scotland) Act 1907.	Section 4 so far as relating to criminal proceedings.
8 Edw. 7. c. 65.	The Summary Jurisdiction (Scotland) Act 1908.	Section 2. Section 10. Section 19(3) and (5). Section 30. Section 43. Sections 45 to 47. Section 77.
6 & 7 Geo. 5. c. 50.	The Larceny Act 1916.	Section 39(2) and (3).
9 & 10 Geo. 5. c. 71.	The Sex Disqualification (Removal) Act 1919.	Sections 1 and 4(2) so far as relating to criminal proceedings.
11 & 12 Geo. 5. c. 50.	The Criminal Procedure (Scotland) Act 1921.	The whole Act.
15 & 16 Geo. 5. c. 81.	The Circuit Courts and Criminal Procedure (Scotland) Act 1925.	The whole Act.
16 & 17 Geo. 5. c. 15.	The Criminal Appeal (Scotland) Act 1926.	Sections 1 to 3. In section 4(1), the first and second sentences. Sections 5 to 18.
23 & 24 Geo. 5. c. 41.	The Administration of Justice (Scotland) Act 1933.	Section 19. Section 21.
1 Edw. 8 & 1 Geo. 6. c. 37.	The Children and Young Persons (Scotland) Act 1937.	Sections 24 and 25. Sections 39 to 45. Section 46 so far as relating to criminal proceedings. Sections 47 to 55. Section 57(1) and (2). Section 58. Section 58A(1). Section 59(2), (3) and (4). Section 63. Section 67. Section 103. Schedule 1.
3 & 4 Geo. 6. c. 42.	The Law Reform (Miscellaneous Provisions) (Scotland) Act 1940.	Section 8.
12, 13 & 14 Geo. 6. c. 94.	The Criminal Justice (Scotland) Act 1949.	Part I, except sections 21 and 42. Section 67. Section 79(2). Schedule 2. In Schedule 11, the entries relating to the Criminal Procedure (Scotland) Act 1887 and the Children and Young Persons (Scotland) Act 1937 (other than section 62 thereof).

SCH. 10

Session and Chapter	Short Title	Extent of Repeal
2 & 3 Eliz. 2. c. 48.	The Summary Jurisdiction (Scotland) Act 1954.	Sections 1 to 73. In section 74, in subsection (1), the first sentence, and subsection (2). Section 75. Section 76(1)(*a*), (*b*) and (*c*). Section 77, except for the definition of " High Court ". Section 78. Schedule 1. Schedule 4.
8 & 9 Eliz. 2. c. 23.	The First Offenders (Scotland) Act 1960.	The whole Act.
8 & 9 Eliz. 2. c. 61.	The Mental Health (Scotland) Act 1960.	Sections 54 and 55. Section 57(1) to (4). Section 59(1). Section 60(1), (2) and (4). Sections 62 and 63. Section 96(5). In Schedule 4, the entry relating to the Criminal Justice (Scotland) Act 1949.
1963 c. 37.	The Children and Young Persons Act 1963.	In section 57, subsection (2) and, in subsection (4), the words " and 54 ".
1963 c. 39.	The Criminal Justice (Scotland) Act 1963.	Section 1. Section 2(2). Section 3. Sections 6 to 8. Section 13. Sections 16 and 17. Sections 23 to 25. Section 26(1). Sections 27 to 47. In section 53(1), the words " sections 39 and 40 ". In section 53(3), the words " section 38 ". In Schedule 1, paragraphs 4 to 10. In Schedule 3, Part I. In Schedule 5, the entries relating to the Summary Jurisdiction (Scotland) Act 1954 and the First Offenders (Scotland) Act 1960.
1965 c. 39.	The Criminal Procedure (Scotland) Act 1965.	The whole Act.
1965 c. 71.	The Murder (Abolition of Death Penalty) Act 1965.	Section 1(1), (2), (3) and (5) except so far as relating to courts-martial.
1966 c. 19.	The Law Reform (Miscellaneous Provisions) (Scotland) Act 1966.	Section 9.

SCH. 10

Session and Chapter	Short Title	Extent of Repeal
1967 c. 80.	The Criminal Justice Act 1967.	Section 48(1). Section 54(6) and (8). Section 62(8). Section 64(2)(*c*). Section 68. Section 72(1) to (4). Section 93(3). In Schedule 6, paragraph 21.
1968 c. 49.	The Social Work (Scotland) Act 1968.	Section 56, except subsection (5). Section 57(1). In Schedule 2, in Part I, in paragraph 2, the words " (except in section 54) ". In Schedule 2, Part II, except in paragraph 16, section 58A (2) and (3) of the Children and Young Persons (Scotland) Act 1937, and paragraphs 7 and 18. In Schedule 8, paragraphs 1, 22 to 31, 55, 56 and 69 to 72.
1969 c. 54.	The Children and Young Persons Act 1969.	In Schedule 5, paragraphs 25, 26, 67 and 68. In Schedule 5, in paragraph 65(2), the words " and 13 ".
1972 c. 71.	The Criminal Justice Act 1972.	Section 23.
1973 c. 62.	The Powers of Criminal Courts Act 1973.	In section 53, the words from " or under " to " 1949 ". In section 58(*a*), the word "53". In Schedule 5, paragraphs 3, 8, 11, 18 and 19.
1973 c. 65.	The Local Government (Scotland) Act 1973.	In Schedule 27, paragraphs 6, 7 and 15.

PART II

ACTS OF ADJOURNAL REVOKED

Year and date or number	Title	Extent of revocation
1815 (June 26).	Act of Adjournal—High Court (Scotland) Fines and Forfeited Penalties—1815 (June 26).	The words from " all fines imposed " (where those words first occur) to " otherwise disposed of ".

SCH. 10

Year and date or number	Title	Extent of revocation
1817 (Sep. 9).	Act of Adjournal—Swearing the same Assize on different trials—1817 (Sep. 9).	The whole Act.
1821 (July 9).	Act of Adjournal—Doubles of Indictments and Criminal Letters—1821 (July 9).	The whole Act.
1849 (Aug. 1).	Act of Adjournal—Procedure and Records in the High Court—1849 (Aug. 1).	Sections III and V.
1879 (Feb. 22).	Act of Adjournal—Sentences of Imprisonment—1879 (Feb. 22).	The whole Act.
1887 (Nov. 3).	Act of Adjournal—Summoning of Jurors and Report under Public Record (Scotland) Act 1809—1887 (Nov. 3).	Section (3).
1900 (Mar. 20).	Act of Adjournal—Fine or Imprisonment (Scotland and Ireland) Act 1899—1900 (Mar. 20).	The whole Act.
1909 (Mar. 20).	Act of Adjournal—Appeals under section 63 of the Summary Jurisdiction (Scotland) Act 1908—1909 (Mar. 20).	The whole Act.
1920 No. 2462.	Act of Adjournal—Return of Jurors for Sittings of High Court at Edinburgh—1920 No. 2462.	The whole Act.
1921 No. 167.	Act of Adjournal—Sex Disqualification (Removal) Act 1919 and Jurors (Enrolment of Women) (Scotland) Act 1920—1921 No. 167.	The whole Act.
1925 No. 366.	Act of Adjournal—Absent Jurors, Application and Remissions of Fines—1925 No. 366.	The whole Act.
1926 No. 1373.	Act of Adjournal—Criminal Appeal (Scotland) Act 1926—1926 No. 1373.	The whole Act, except section 19(*b*) and the Schedule.
1935 (Mar. 22).	Act of Adjournal—Shorthand Notes at Criminal Trials—1935 (Mar. 22).	The whole Act.
1936 No. 1151.	Act of Adjournal—Verdicts and Sentences—1936 No. 1151.	The whole Act.
1950 (June 15).	Act of Adjournal Fines on Indictments (Payment by Instalments) 1950 (1950 (June 15)).	The whole Act.
S.I. 1964/249.	Act of Adjournal (Summary Procedure) 1964 (1964 No. 249).	The whole Act, except sections 13 and 14 and the Schedule.
S.I. 1966/694.	Act of Adjournal (Procedure in Criminal Trials Amendment) 1966 (1966 No. 694).	The whole Act.