



Criminal Justice (Scotland) Act 1987

1987 CHAPTER 41

PART II

MISCELLANEOUS

Detention by customs officers

48 Detention and questioning by customs officers.

- (1) Where an officer has reasonable grounds for suspecting that a person has committed or is committing an offence punishable by imprisonment relating to an assigned matter, the officer may, for the purpose of facilitating the carrying out of investigations—
- into the offence; and
 - as to whether criminal proceedings should be instigated against the person, detain that person and take him as quickly as is reasonably practicable to a customs office or other premises [^{F1}and may thereafter for that purpose take him to any other place] and, subject to the following provisions of this section, the detention may continue [^{F2}at the customs office, or as the case may be the other premises or place].
- (2) Detention under subsection (1) above shall be terminated not more than six hours after it begins or (if earlier)—
- when the person is arrested;
 - when he is detained in pursuance of any other enactment or subordinate instrument; or
 - where there are no longer such grounds as are mentioned in the said subsection (1),
- and when a person has been detained under subsection (1) above, he shall be informed immediately upon the termination of his detention in accordance with this subsection that his detention has been terminated.
- (3) Where a person has been released at the termination of a period of detention under subsection (1) above he shall not thereafter be detained, under that subsection, on the same grounds or on any grounds arising out of the same circumstances.

Status: Point in time view as at 28/03/2011.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part II. (See end of Document for details)

- (4) Where a person has previously been detained in pursuance of any other enactment or subordinate instrument, he may not be detained under subsection (1) above on the same grounds or on grounds arising from the same circumstances as those which led to his earlier detention.
- (5) At the time when an officer detains a person under subsection (1) above, he shall inform the person of his suspicion, of the general nature of the offence which he suspects has been or is being committed and of the reason for the detention; and there shall be recorded—
- (a) the place where detention begins and the customs office or other premises to which the person is taken;
 - [^{F3}(aa) any other place to which the person is, during the detention, thereafter taken;]
 - (b) the general nature of the suspected offence;
 - (c) the time when detention under subsection (1) above begins and the time of the person's arrival at the customs office or other premises;
 - (d) the time when the person is informed of his rights in terms of subsection (8) below and of section 49(1) of this Act and the identity of the officer so informing him;
 - (e) where the person requests such intimation to be sent as is specified in section 49(1) of this Act, the time when such request is—
 - (i) made;
 - (ii) complied with; and
 - (f) the time of the person's [^{F4}release from detention] or, where instead of being released he is—
 - (i) further detained under section 50 of this Act, the time of commencement of the further detention; or
 - (ii) arrested in respect of the alleged offence, the time of such arrest.
- (6) Where a person is detained under subsection (1) above, an officer may—
- (a) without prejudice to any existing rule of law as regards the admissibility in evidence of any answer given, put questions to him in relation to the suspected offence;
 - (b) exercise the same powers of search as are available following an arrest.
- (7) An officer may use reasonable force in exercising any power conferred by subsection (1) or (6)(b) above.
- (8) A person detained under subsection (1) above shall be under no obligation to answer any question other than to give his name and address, and an officer shall so inform him both on so detaining him and on arrival at the customs office or other premises.
- (9) In this section and in sections 49 and 50 of this Act “assigned matter” and “officer” have the meanings given to them by section 1 of the ^{M1}Customs and Excise Management Act 1979, and “customs office” means a place for the time being occupied by Her Majesty's Customs and Excise.

Textual Amendments

- F1** Words in s. 48(1) inserted (3.2.1995) by 1994 c. 33, s. 129(4)(a) (with Sch. 9 para. 17); S.I. 1995/127, art. 2(1), Sch. 1

Status: Point in time view as at 28/03/2011.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part II. (See end of Document for details)

- F2** Words in s. 48(1) substituted (3.2.1995) by 1994 c. 33, s. 129(4)(b) (with Sch. 9 para. 17); S.I. 1995/127, art. 2(1), Sch. 1
- F3** S. 48(5)(aa) inserted (3.2.1995) by 1994 c. 33, s. 129(5)(a) (with Sch. 9 para. 17); S.I. 1995/127, art. 2(1), Sch. 1
- F4** Words in s. 48(5)(f) substituted (3.2.1995) by 1994 c. 33, s. 129(5)(b) (with Sch. 9 para. 17); S.I. 1995/127, art. 2(1), Sch. 1

Modifications etc. (not altering text)

- C1** S. 48(4) excluded by Customs and Excise Management Act 1979 (c. 2, SIF 40:1), s. 164(4) (as added by Finance Act 1988 (c. 39, SIF 40:1), s. 10(3))

Marginal Citations

- M1** 1979 c. 2.

49 Right to have someone informed when detained

- (1) Without prejudice to section 19 or 305 of the ^{M2}1975 Act (intimation to solicitor following arrest), a person who, not being a person in respect of whose detention subsection (2) below applies, is being detained under section 48 of this Act [^{F5}and has been taken to a customs office or other premises or place] shall be entitled to have intimation of his detention and of the [^{F5}customs office or other premises or place] sent to a solicitor and to one other person reasonably named by him without delay or, where some delay is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders, with no more delay than is so necessary; and the person shall be informed of such entitlement—
- (a) on arrival at the customs office or other premises; or
- (b) where he is not detained until after such arrival, on such detention.
- (2) Without prejudice to the said section 19 or 305, an officer shall, where a person who is being detained as is mentioned in subsection (1) above appears to him to be a child, send without delay such intimation as is mentioned in that subsection to that person's parent if known; and the parent—
- (a) in a case where there is reasonable cause to suspect that he has been involved in the alleged offence in respect of which the person has been detained, may; and
- (b) in any other case shall,
- be permitted access to the person.
- (3) The nature and extent of any access permitted under subsection(2) above shall be subject to any restriction essential for the furtherance of the investigation or the well-being of the person.
- (4) In subsection (2) above—
- (a) “child” means a person under 16 years of age; and
- (b) “parent” includes a guardian and any person who has the [^{F6}care] of a child.

Textual Amendments

- F5** Words in s. 49(1) substituted (3.2.1995) by 1994 c. 33, s. 129(6)(with Sch. 9 para. 17); S.I. 1995/127, art. 2(1), Sch. 1

Status: Point in time view as at 28/03/2011.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part II. (See end of Document for details)

F6 Word in s. 49(4)(b) substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 43** (with s. 103(1)); S.I. 1995/2203, art. 3(3), **Sch.**

Marginal Citations

M2 1975 c.21.

50 Detention in connection with certain drug smuggling offences.

- (1) Where an officer has reasonable grounds for suspecting—
- (a) that a person has committed or is committing a relevant offence; and
 - (b) that, in connection with the commission of such an offence, a controlled drug is secreted in the person's body,
- a superior officer may, notwithstanding that the person has been or is being detained in pursuance of any other enactment or subordinate instrument, authorise the detention of the person at a customs office or other premises in accordance with this section.
- (2) Subject to subsection (7) below, where a person is detained under subsection (1) above or is further detained in pursuance of a warrant under subsection (4) below he shall—
- (a) provide such specimens of blood or urine for analysis;
 - (b) submit to such intimate searches, to be carried out by a registered medical practitioner;
 - (c) submit to such other tests or examination prescribed by the Secretary of State by regulations made under this paragraph to be carried out by, or under the supervision of, a registered medical practitioner,
- as the officer may reasonably require; and regulations under paragraph (c) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Subject to subsection (4) below, detention under subsection (1) above shall be terminated not more than 24 hours after it begins, or (if earlier)—
- (a) when the person is arrested;
 - (b) when he is detained in pursuance of any other enactment or subordinate instrument; or
 - (c) where there are no longer such grounds as are mentioned in subsection (1),
- and, when a person has been detained under subsection (1), he shall, unless further detained in pursuance of a warrant under subsection (4) below, be informed immediately upon the termination of his detention in accordance with this subsection that his detention has been terminated.
- (4) Where a person is detained under subsection (1) above and either—
- (a) he has failed or refused—
 - (i) to provide a specimen in pursuance of paragraph (a) of subsection (2) above; or
 - (ii) to submit to any search, test or examination referred to in paragraph (b) or (c) of that subsection; or
 - (b) as a result of anything done in pursuance of the said subsection (2) the officer continues to have reasonable grounds for suspecting—
 - (i) that the person has committed or is committing a relevant offence; and
 - (ii) that a controlled drug is secreted in the person's body,

Status: Point in time view as at 28/03/2011.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part II. (See end of Document for details)

the procurator fiscal may, at the request of a superior officer, apply to the sheriff for a warrant for the further detention of the person at a customs office or other premises for an additional period of not more than 7 days; and if the sheriff is satisfied that there has been such failure or refusal as is mentioned in paragraph (a) above or, as the case may be, that there are reasonable grounds as mentioned in paragraph (b) above he may grant a warrant for such further detention.

(5) Detention in pursuance of a warrant under subsection (4) above shall be terminated at the end of the period of 7 days mentioned in that subsection or (if earlier)—

- (a) when the person is arrested;
- (b) when he is detained in pursuance of any other enactment or subordinate instrument; or
- (c) where there are no longer such grounds as are mentioned in paragraph (b) of that subsection,

and when a person has been detained in pursuance of a warrant under subsection (4), he shall be informed immediately on the termination of his detention in accordance with this subsection that his detention has been terminated.

(6) Subject to subsection (7) below, the question whether it is to be a specimen of blood or a specimen of urine which is to be provided in pursuance of subsection (2) above shall be decided by the officer making the requirement.

(7) A person may be required, in pursuance of subsection (2) above—

- (a) to provide a specimen of blood; or
- (b) to submit to any search, test or examination,

only if a registered medical practitioner is of the opinion that there are no medical reasons for not making such a requirement; and, if a requirement to provide a specimen of blood is made, the specimen may be taken only by a registered medical practitioner.

(8) Subsections (3), (5), (6) and (8) of section 48 of this Act shall apply in respect of a person detained under this section as they apply in respect of a person detained under the said section 48; and, except as regards a requirement under subsection (2) above, an officer may use reasonable force in exercising any power conferred by this section.

(9) Section 49 of this Act shall, subject to the following modifications, apply in respect of a person detained under this section as it applies to a person detained under section 48 of this Act—

- (a) any delay in informing a solicitor and one other person of such detention as is mentioned in subsection (1) of the said section 49 shall not extend longer than the period of 24 hours from the start of the detention, and shall only be permitted on the authorisation of a superior officer;
- (b) the person detained shall be entitled to consult a solicitor at any time without delay, and he shall be informed of such entitlement at the commencement of the detention; but, if a superior officer considers it necessary in the interest of the investigation or the prevention of a crime or the apprehension of offenders, he may authorise a delay not extending longer than the period of 24 hours from the start of the detention; and
- (c) paragraph (a) of subsection (2) of the said section 49 shall cease to apply at the end of the period of 24 hours from the start of the detention,

Status: Point in time view as at 28/03/2011.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part II. (See end of Document for details)

but any delay authorised by virtue of this subsection shall be for no longer than is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders.

(10) Without prejudice to section 20(2) of the ^{M3}Interpretation Act 1978, the references in section 48(5) of this Act to section 49(1) of this Act shall be construed as including references to subsection (9) above; and the requirement to record certain matters under the said section 48(5) shall include a requirement to record the time when a person detained makes a request to consult a solicitor and the time when the solicitor is contacted for the purpose of arranging a consultation.

(11) In this section—

“intimate search” means a search which consists of the physical examination of a person’s body orifices;

“relevant offence” means an offence involving a controlled drug under any of the following provisions of the ^{M4}Customs and Excise Management Act 1979—

- (a) section 50(2) or (3) (importation etc. of prohibited goods);
- (b) section 68(2) (exportation etc. of prohibited goods);
- (c) section 170(1) (possessing or dealing with prohibited goods);
- (d) section 170(2) (being concerned in evasion or attempt at evasion of a prohibition);

“superior officer” means an officer of the graded of senior executive officer or above.

Marginal Citations

M3 1978 c. 30

M4 1979 c. 2.

Investigation of serious or complex fraud

51 Lord Advocate’s direction.

(1) Where it appears to the Lord Advocate—

- (a) that a suspected offence may involve serious or complex fraud; and
- (b) that, for the purpose of investigating the affairs or any aspect of the affairs of any person, there is good reason to do so,

he may give a direction under this section [^{F7}]; and he may also give such a direction by virtue of section 4(2B) of the ^{M5}Criminal Justice (International Co-operation) Act 1990 or on a request being made to him by the Attorney-General of the Isle of Man, Jersey or Guernsey acting under legislation corresponding to this section and sections 52 to 54 of this Act.]..

(2) Where a direction is given under this section, sections 52 to 54 of this Act shall apply as regards the investigation of the offence; and any person (other than a constable) nominated by the Lord Advocate either generally or in respect of a particular case (in those sections referred to as “a nominated officer”) shall be entitled to exercise the powers and functions conferred by those sections.

(3) A direction under this section shall be signed by the Lord Advocate.

Status: Point in time view as at 28/03/2011.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part II. (See end of Document for details)

Textual Amendments

F7 Words in s. 51(1) added (3.2.1995) by 1994 c. 33, s. 164(3) (with Sch. 9 para. 17); S.I. 1995/127, art. 2(1), Sch. 1

Modifications etc. (not altering text)

C2 S. 51 extended (3.2.1995) by 1990 c. 5, s. 4(2B) (as inserted (3.2.1995) by 1994 c. 33, s. 164(1)) (with Sch. 9 para. 17); S.I. 1995/127, art. 2(1), Sch. 1

Marginal Citations

M5 1990 c. 5.

52 Powers of investigation.

- (1) A nominated officer may by notice in writing require the person whose affairs are to be investigated (“the person under investigation”) or any other person who he has reason to believe has relevant information to ^{F8}attend before a nominated officer at a specified time and place and answer questions or otherwise furnish information with respect to any matter relevant to the investigation. ^{F8}answer questions or otherwise furnish information with respect to any matter relevant to the investigation at a specified place and either at a specified time or forthwith.]
- (2) A nominated officer may by notice in writing require the person under investigation or any other person to produce at ^{F9}a specified time and place ^{F9}such place as may be specified in the notice and either forthwith or at such time as may be so specified,] any specified documents which appear to a nominated officer to relate to any matter relevant to the investigation or any documents of a specified ^{F9}class ^{F9}description] which appear to him so to relate; and—
 - (a) if any such documents are produced, a nominated officer may—
 - (i) take copies or extracts from them;
 - (ii) require the person producing them to provide an explanation of any of them;
 - (b) if any such documents are not produced, a nominated officer may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.
- (3) Where, on a petition presented by the procurator fiscal, the sheriff is satisfied, in relation to any documents, that there are reasonable grounds for believing—
 - (a) that—
 - (i) a person has failed to comply with an obligation under this section to produce them;
 - (ii) it is not practicable to serve a notice under subsection (2) above in relation to them; or
 - (iii) the service of such a notice in relation to them might seriously prejudice the investigation; and
 - (b) that they are on premises specified in the petition,he may issue such a warrant as is mentioned in subsection (4) below.
- (4) The warrant referred to in subsection (3) above is a warrant authorising a constable together with any other persons named in the warrant—

Status: Point in time view as at 28/03/2011.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part II. (See end of Document for details)

- (a) to enter (using such force as is reasonably necessary for the purpose) and search the premises; and
 - (b) to take possession of any documents appearing to be documents of the description specified in the petition or to take in relation to any documents so appearing any other steps which may appear to be necessary for preserving them and preventing interference with them.
- (5) A statement by a person in response to a requirement imposed by virtue of this section may only be used in evidence against him [^{F10}(a)] in a prosecution for an offence under section 2 of the ^{M6}False Oaths (Scotland) Act 1933 [^{F10}; or
- (b) in a prosecution for some other offence where in giving evidence he makes a statement inconsistent with it.]
- (6) A person shall not under this section be required to disclose any information or produce any document which is an item subject to legal privilege within the meaning of section 40 of this Act; except that a lawyer may be required to furnish the name and address of his client.
- (7) No person shall be bound to comply with any requirement imposed by a person exercising power by virtue of a nomination under section 51(2) of this Act unless he has, if required to do so, produced evidence of his authority.
- [^{F11}(7A) Any evidence obtained by the Lord Advocate by virtue of section 4(2B) of the Criminal Justice (International Co-operation) Act 1990 shall be furnished by him to the Secretary of State for transmission to the overseas authority in compliance with whose request (in the following subsections referred to as the “relevant request”) it was so obtained.
- (7B) If, in order to comply with the relevant request it is necessary for that evidence to be accompanied by any certificate, affidavit or other verifying document, the Lord Advocate shall also furnish for transmission such document of that nature as appears to him to be appropriate.
- (7C) Where any evidence obtained by virtue of the said section 4(2B) consists of a document, the original or a copy shall be transmitted and where it consists of any other article the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the relevant request.]
- (8) In this section—
- “documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form; and
 - [^{F12}“evidence”, in relation to a relevant request, includes documents and other articles;]
 - “premises” has the same meaning as in section 40 of this Act.
- (9) This section and sections 51 and 53 of this Act shall apply to England and Wales and Northern Ireland; and for the purposes of such application any reference—
- (a) to the sheriff shall be construed as a reference to a justice of the peace; and
 - (b) to a petition presented by the procurator fiscal shall be construed—
 - (i) in England and Wales as a reference to an information laid by a nominated officer;

Status: Point in time view as at 28/03/2011.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part II. (See end of Document for details)

- (ii) in Northern Ireland as a reference to a complaint laid by a nominated officer.

Textual Amendments

- F8** In s. 52(1) for the words from “attend” to the end there is substituted (*prosp.*) “answer questions or otherwise furnish information with respect to any matter relevant to the investigation at a specified place and either at a specified time or forthwith.” by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. [170](#), [171](#), [Sch. 8 para. 16](#), [Sch. 15 para. 117\(2\)](#)
- F9** In s. 52(2) for “a specified time and place” there is substituted (*prosp.*) “such place as may be specified in the notice and either forthwith or at such time as may be so specified,” and for “class” there is substituted (*prosp.*) “description” by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. [170](#), [171](#), [Sch. 8 para. 16](#), [Sch. 15 para. 117\(3\)](#)
- F10** Words inserted and added respectively by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. [170](#), [171](#), [Sch. 8 para. 16](#), [Sch. 15 para. 117\(4\)](#) it is provided that in section 52(5)
- F11** [S. 52\(7A\)-\(7C\)](#) inserted (3.2.1995) by [1994 c. 33, s. 164\(4\)\(a\)](#) (with [Sch. 9 para. 17](#)); [S.I. 1995/127, art. 2\(1\)](#), [Sch. 1](#)
- F12** Definition in s. 52(8) inserted (3.2.1995) by [1994 c. 33, s. 164\(4\)\(b\)](#) (with [Sch. 9 para. 17](#)); [S.I. 1995/127, art. 2\(1\)](#), [Sch. 1](#)

Marginal Citations

- M6** [1933 c. 20](#).

53 Offences in relation to investigations under section 52.

- (1) Where any person—
- knows or suspects that an investigation under section 52 of this Act is being carried out or is likely to be carried out; and
 - falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of documents which he knows or suspects or has reasonable grounds to suspect are or would be relevant to such an investigation,
- he shall be guilty of an offence.
- (2) In proceedings against a person for an offence under subsection (1) above, it shall be a defence to prove—
- that he did not know or suspect that by acting as he did he was likely to prejudice the investigation; or
 - that he had lawful authority or reasonable excuse for acting as he did.
- (3) A person guilty of an offence under subsection (1) above shall be liable—
- on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both; and
 - on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (4) Any person who fails to comply with a requirement imposed on him under the said section 52 shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

Status: Point in time view as at 28/03/2011.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part II. (See end of Document for details)

(5) In proceedings against a person for an offence under subsection (4) above, it shall be a defence to prove that he had a reasonable excuse for acting as he did.

F13 54 Disclosure of Information.

.....

Textual Amendments

F13 S. 54 repealed (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), Sch. 7 para. 17; S.S.I. 2011/178, art. 2, Sch.

55 Power to petition for winding up etc. on information obtained under section 52.

The words “or section 52 of the Criminal Justice (Scotland) Act 1987” shall be inserted

- [^{F14}(a) in section 440 of the Companies Act 1985, after the words “that Act”];
- (b) in section 8(1) of the ^{M7}Company Directors Disqualification Act 1986, after the words “the Financial Services Act 1986”, in the second place where they occur; and
- ^{F15}(c)

Extent Information

E1 S. 55(a)(b) extends to England and Wales and Scotland see s. 72(1)(4)

Textual Amendments

F14 S. 55(a) repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 215, Sch. 24

F15 S. 55(c) repealed (N.I.)(01.10.1991) by S.I. 1990/1504 (N.I. 10), art. 113, Sch. 6; S.R. 1991/438, art.5 (c).

Marginal Citations

M7 1986 c. 46.

Conditional offer by procurator fiscal

[^{F16}56 Conditional offer of fixed penalty by procurator fiscal.

(1)

^{F16}(2)

^{F16}(2A)

^{F16}(3)

^{F16}(3A)

^{F16}(4)

^{F16}(5)

Status: Point in time view as at 28/03/2011.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part II. (See end of Document for details)

- F16(6)
- F16(7)
- F16(7A)
- F16(8)
- F16(9)
- F16(10)
- F16(11) The Secretary of State may, by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, make such provision as he considers necessary for the enforcement in England and Wales or Northern Ireland of any penalty (treated, in pursuance of subsection (8) above, as a fine). which is transferred as a fine to a court in England and Wales or, as the case may be, Northern Ireland.]

Extent Information

E2 S. 56 (except s. 56(11) which extends to the U.K.) extends to Scotland

Textual Amendments

F16 S. 56 repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

Sittings of the High Court

F17 57

Textual Amendments

F17 Ss. 56-68 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16, 17)

Sentencing power of the sheriff

F18 58

Textual Amendments

F18 Ss. 56-68 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

Detention of children

[F19 59 **Detention of children in summary proceedings.**

- (1) For section 413 of the 1975 Act (committal for residential training) there shall be substitute the following new section—

Status: Point in time view as at 28/03/2011.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part II. (See end of Document for details)

“ Detention of children.

- (1) Where a child appears before the sheriff in summary proceedings and pleads guilty to, or is found guilty of, an offence to which this section applies, the sheriff may order that he be detained in residential care by the appropriate local authority for such period, not exceeding one year, as the sheriff may determine in such place (in any part of the United Kingdom) as the local authority may, from time to time, consider appropriate.
- (2) This section applies to any offence in respect of which it is competent to impose imprisonment on a person of the age of 21 years or more.
- (3) In this section—
 - “the appropriate local authority” means—
 - (a) where the child usually resides in Scotland, the regional or islands council for the area in which he usually resides;
 - (b) in any other case, the regional or islands council for the area in which the offence was committed;

“care” shall be construed in accordance with section 32(3) of the 1968 Act, and the provisions of that Act specified in section 44(5) of that Act shall apply in respect of a child who is detained in residential care in pursuance of this section as they apply in respect of a child who is subject to a supervision requirement;

“the 1968 Act” means the Social Work (Scotland) Act 1968.
- (4) Where a child in respect of whom an order is made under this section is also subject to a supervision requirement within the meaning of the 1968 Act, subject to subsection (6) below, the supervision requirement shall be of no effect during any period for which he is required to be detained under the order.
- (5) The Secretary of State may, by regulations made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, make such provision as he considers necessary as regards the detention in secure accommodation (within the meaning of the 1968 Act) of children in respect of whom orders have been made under this section.
- (6) Section 20A of the 1968 Act (review of children in care) shall apply to a child detained in residential care in pursuance of an order under this section as if the references to care in that section were references to care within the meaning of this section; and, without prejudice to their duty to do so by virtue of the said section 20A, the local authority may, at any time, review the case of such a child and may, in consequence of such a review and after having regard to the best interests of the child and the need to protect members of the public, release the child—
 - (a) for such period and on such conditions as they consider appropriate; or
 - (b) unconditionally,

and where a child who is released unconditionally is subject to a supervision requirement within the meaning of the 1968 Act, the effect of the supervision requirement shall, in the case of a supervision requirement imposed during

Status: Point in time view as at 28/03/2011.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part II. (See end of Document for details)

the period of detention, commence or, in any other case, resume upon such release.

(7) Where a local authority consider it appropriate that a child in respect of whom an order has been made under subsection (1) above should be detained in a place in any part of the United Kingdom outside Scotland, the order shall be a like authority as in Scotland to the person in charge of the place to restrict the child's liberty to such an extent as that person may consider appropriate having regard to the terms of the order."

(2) In section 463 of the 1975 Act—

- (a) in subsection (1)(b) for the words "and 390" there shall be substituted the words ", 390 and 413"; and
- (b) in subsection (1A) for the words "and 374" there shall be substituted the words ", 374 and 413".

(3) Notwithstanding the repeal by this Act of section 58A of the ^{M8}Children and Young Persons (Scotland) Act 1937, any child who, before the commencement of this section, has been ordered to be detained pursuant to the directions of the Secretary of State under section 413 of the 1975 Act—

- (a) shall, while so detained after such commencement, continue to be deemed to be in legal custody; and
- (b) may at any time be released conditionally or unconditionally by the Secretary of State, and any such child conditionally released shall be liable to recall on the directions of the Secretary of State and if he fails to comply with any conditions of his release he may be apprehended without warrant and taken to the place from which he was released.]

Textual Amendments

F19 Ss. 56-68 repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

Marginal Citations

M8 1937 c.37.

Evidence

^{F20}**60**

Textual Amendments

F20 s. 56-68 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

^{F21}**61**

Status: Point in time view as at 28/03/2011.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part II. (See end of Document for details)

Textual Amendments

F21 s. 56-68 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

Miscellaneous

F22 **62**

Textual Amendments

F22 s. 56-68 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

F23 **63**

Textual Amendments

F23 s. 56-68 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

F24 **64**

Textual Amendments

F24 s. 56-68 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

F25 **65** .
.....

Textual Amendments

F25 s. 56-68 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

F26 **66**

Textual Amendments

F26 s. 56-68 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

F27 **67**

Status: Point in time view as at 28/03/2011.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part II. (See end of Document for details)

Exceeding £50,000 but not exceeding £100,000	2 years
Exceeding £100,000 but not exceeding £250,000	3 years
Exceeding £250,000 but not exceeding £1 million	5 years
Exceeding £1 million	10 years.

Textual Amendments

F27 s. 56-68 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

F28 **68**

Textual Amendments

F28 s. 56-68 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

Status:

Point in time view as at 28/03/2011.

Changes to legislation:

There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part II.