



Criminal Justice (Scotland) Act 1995

1995 CHAPTER 20

PART I

THE COURSE OF JUSTICE

Miscellaneous

56 Criminal Courts Rules Council

- (1) There shall be established a body, to be known as the Criminal Courts Rules Council (in this section referred to as “the Council”) which shall have the functions conferred on it by subsection (9) below.
- (2) The Council shall consist of—
 - (a) the Lord Justice General, the Lord Justice Clerk and the Clerk of Justiciary;
 - (b) a further Lord Commissioner of Justiciary appointed by the Lord Justice General;
 - (c) the following persons appointed by the Lord Justice General after such consultation as he considers appropriate—
 - (i) two sheriffs;
 - (ii) two members of the Faculty of Advocates;
 - (iii) two solicitors;
 - (iv) one sheriff clerk; and
 - (v) one person appearing to him to have a knowledge of the procedures and practices of the district court;
 - (d) two persons appointed by the Lord Justice General after consultation with the Lord Advocate, at least one of whom must be a procurator fiscal;
 - (e) two persons appointed by the Lord Justice General after consultation with the Secretary of State, at least one of whom must be a person appearing to the Lord Justice General to have—
 - (i) a knowledge of the procedures and practices of the courts exercising criminal jurisdiction in Scotland; and

Status: This is the original version (as it was originally enacted).

- (ii) an awareness of the interests of victims of crime and of witnesses in criminal proceedings; and
 - (f) any persons appointed under subsection (3) below.
- (3) The Lord Justice General may appoint not more than two further persons, and the Secretary of State may appoint one person, to membership of the Council.
- (4) The chairman of the Council shall be the Lord Justice General or such other member of the Council, being a Lord Commissioner of Justiciary, as the Lord Justice General may nominate.
- (5) The members of the Council appointed under paragraphs (b) to (f) of subsection (2) above shall, so long as they retain the respective qualifications (if any) mentioned in those paragraphs, hold office for three years and be eligible for reappointment.
- (6) Any vacancy in the membership of the Council by reason of the death or demission of office, prior to the expiry of the period for which he was appointed, of a member appointed under any of paragraphs (b) to (f) of subsection (2) above shall be filled by the appointment by the Lord Justice General or, as the case may be, the Secretary of State, after such consultation (if any) as is required by the paragraph in question, of another person having the qualifications (if any) required by that paragraph, and a person so appointed shall hold office only until the expiry of that period.
- (7) The Council shall meet—
 - (a) at intervals of not more than 12 months; and
 - (b) at any time when summoned by the chairman or by three members of the Council,
 but shall, subject to the foregoing, have power to regulate the summoning of its meetings and the procedure at such meetings.
- (8) At any meeting of the Council six members shall be a quorum.
- (9) The functions of the Council shall be—
 - (a) to keep under general review the procedures and practices of the courts exercising criminal jurisdiction in Scotland (including any matters incidental or relating to those procedures or practices); and
 - (b) to consider and comment on any draft Act of Adjournal submitted to it by the High Court, which shall, in making the Act of Adjournal, take account to such extent as it considers appropriate of any comments made by the Council under this paragraph.
- (10) In the discharge of its functions under subsection (9) above the Council may invite representations on any aspect of the procedures and practices of the courts exercising criminal jurisdiction in Scotland (including any matters incidental or relating to those procedures or practices) and shall consider any such representations received by it, whether or not submitted in response to such an invitation.
- (11) Except where the context otherwise requires, expressions used in this section and in the 1975 Act have the same meaning in this section as in that Act.

57 Information for financial and other purposes

- (1) The Secretary of State shall in each year publish such information as he considers expedient for the purpose of—

- (a) enabling persons engaged in the administration of criminal justice to become aware of the financial implications of their decisions; or
 - (b) facilitating the performance by such persons of their duty to avoid discriminating against any persons on the ground of race or sex or any other improper ground.
- (2) Publication under subsection (1) above shall be effected in such manner as the Secretary of State considers appropriate for the purpose of bringing the information to the attention of the persons concerned.

58 Prints, samples etc. in criminal investigations

- (1) Section 28 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (prints, samples etc. in criminal investigations) shall be amended in accordance with subsections (2) to (4) below.
- (2) In subsection (3)—
- (a) at the beginning there shall be inserted the words “Subject to subsection (3A) below,”;
 - (b) after the words “subsection (2) above” there shall be inserted “, all samples taken under subsection (4) below and all information derived from such samples”; and
 - (c) for the word “immediately” there shall be substituted “as soon as possible”.
- (3) After subsection (3) there shall be inserted the following subsections—
- “(3A) The duty under subsection (3) above to destroy samples taken under subsection (4) below and information derived from such samples shall not apply where the destruction of the sample or the information could have the effect of destroying any sample, or any information derived therefrom, lawfully held in relation to a person other than the person from whom the sample was taken.
- (3B) No sample, or information derived from a sample, retained by virtue of subsection (3A) above shall be used—
- (a) in evidence against the person from whom the sample was taken; or
 - (b) for the purposes of the investigation of any offence.
- (3C) The duty under subsection (3) above shall not apply where the record, sample or information in question is of the same kind as a record, a sample or, as the case may be, information lawfully held by or on behalf of any police force in relation to the person.”.
- (4) In subsection (4)—
- (a) in paragraph (a)—
 - (i) after the word “body” there shall be inserted “, other than pubic hair,”; and
 - (ii) for the words “or combing” there shall be substituted “, combing or plucking”; and
 - (b) at the end there shall be inserted the following paragraph—
 - “(d) from the inside of the mouth, by means of swabbing, a sample of saliva or other material”.

(5) After section 28 of that Act of 1993 there shall be inserted the following sections—

“28A Prints, samples etc. in criminal investigations: supplementary provisions

- (1) This section applies where a person convicted of an offence—
- (a) has not, since the conviction, had a sample, print or impression taken from him; or
 - (b) has (whether before or after the conviction) had a sample, print or impression taken from him but it was not suitable for the means of analysis for which it was taken or, though suitable, was insufficient (either in quantity or in quality) to enable information to be obtained by that means of analysis.
- (2) Where this section applies, a constable may, within the permitted period—
- (a) take from the convicted person fingerprints, palmprints and such other prints and impressions of an external part of the body as the constable reasonably considers it appropriate to take; and
 - (b) with the authority of an officer of a rank no lower than inspector, take from the person any sample mentioned in any of paragraphs (a) to (d) of subsection (4) of section 28 of this Act by the means specified in that paragraph in relation to that sample.
- (3) A constable—
- (a) may require the convicted person to attend a police station for the purposes of subsection (2) above;
 - (b) may, where the convicted person is in legal custody within the meaning of the 1975 Act, exercise the powers conferred by subsection (2) above in relation to the person in the place where he is for the time being.
- (4) In subsection (2) above, “the permitted period” means—
- (a) in a case to which paragraph (a) of subsection (1) above applies, the period of one month beginning with the date of the conviction;
 - (b) in a case to which paragraph (b) of that subsection applies, the period of one month beginning with the date on which a constable of the police force which instructed the analysis receives written intimation that the sample, print or impression was unsuitable or, as the case may be, insufficient as mentioned in that paragraph.
- (5) A requirement under subsection (3)(a) above—
- (a) shall give the person at least seven days' notice of the date on which he is required to attend;
 - (b) may direct him to attend at a specified time of day or between specified times of day.
- (6) Any constable may arrest without warrant a person who fails to comply with a requirement under subsection (3)(a) above.

28B Use of prints, samples etc

Without prejudice to any power to do so apart from this section, prints, impressions and samples lawfully held by or on behalf of any police force or in connection with or as a result of an investigation of an offence and information derived therefrom may be checked against other such prints, impressions, samples and information.”.

59 Calculation of period of detention at police station where person previously detained under another enactment etc

In section 2(3A) of the Criminal Justice (Scotland) Act 1980 (detention and questioning at police station)—

- (a) for the words from “he” to “be” there shall be substituted “and is”; and
- (b) after the word “detention” there shall be inserted “, the period of six hours mentioned in subsection (2) above shall be reduced by the length of that earlier detention”.

60 Jurisdiction of district court in relation to statutory offences

For subsection (1) of section 7 of the Criminal Justice (Scotland) Act 1980 (jurisdiction of district courts in relation to statutory offences) there shall be substituted the following subsections—

- “(1) Except in so far as any enactment (including this Act and an enactment passed after this Act) otherwise provides, it shall be competent for a district court to try any statutory offence which is triable summarily.
- (1A) Without prejudice to any other or wider power conferred by any enactment, it shall not be competent for a district court, as respects any statutory offence—
 - (a) to impose a sentence of imprisonment for a period exceeding 60 days;
 - (b) to impose a fine of an amount exceeding level 4 on the standard scale;
 - or
 - (c) to ordain an accused person to find caution for any period exceeding six months or to an amount exceeding level 4 on the standard scale.”.

61 Conditional offer of fixed penalty by procurator fiscal

- (1) Section 56 of the Criminal Justice (Scotland) Act 1987 (conditional offer of fixed penalty by procurator fiscal) shall be amended as follows.
- (2) After subsection (2) there shall be inserted the following subsection—
 - “(2A) In this section “the appropriate fixed penalty” means such fixed penalty on the scale prescribed under subsection (7) below as the procurator fiscal thinks fit having regard to the circumstances of the case.”.
- (3) In subsection (3)(b)(i), after the word “the” in the second place where it occurs there shall be inserted “appropriate”.
- (4) After subsection (3) there shall be inserted the following subsection—

“(3A) A conditional offer may be made in respect of more than one relevant offence and shall, in such a case, state the amount of the appropriate fixed penalty for all the offences in respect of which it is made.”.

(5) In each of subsections (4) and (6), after the words “payment of the” there shall be inserted “appropriate”.

(6) For subsection (7) there shall be substituted the following subsections—

“(7) The Secretary of State shall, by order, prescribe a scale of fixed penalties for the purposes of this section, the amount of the maximum penalty on the scale being a sum not exceeding level 1 on the standard scale.

(7A) An order under subsection (7) above—

- (a) may contain provision as to the payment of fixed penalties by instalments; and
- (b) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.

(7) In subsection (8), after the words “instalment of the” there shall be inserted “appropriate”.

62 Time limit for summary prosecution of statutory offences

- (1) Section 331 of the 1975 Act (time limit for summary prosecution of statutory offences) shall be amended as follows.
- (2) In subsection (1), after the words “in respect of” there shall be inserted “any offence triable only summarily and consisting of”.
- (3) Subsection (2) shall cease to have effect.

63 Abolition of private summary prosecutions

After section 310 of the 1975 Act there shall be inserted the following section—

“310A Abolition of private summary prosecutions

Except where any enactment otherwise expressly provides, all prosecutions under this Part of this Act shall be brought at the instance of the procurator fiscal.”.

64 Legal aid in case involving insanity in bar of trial

In subsection (1) of section 22 of the Legal Aid (Scotland) Act 1986 (circumstances in which criminal legal aid automatically available), after paragraph (d) there shall be inserted the following paragraphs—

- “(da) in relation to any proceedings under solemn or summary procedure whereby the court determines (whether or not on a plea by the accused person) whether he is insane so that his trial cannot proceed or continue;

- (db) in relation to an examination of facts held under section 174ZA or 375ZA of the Criminal Procedure (Scotland) Act 1975 and the disposal of the case following such examination of facts;
- (dc) in relation to any appeal under section 174ZD (appeal by accused in case involving insanity) or 174ZE (appeal by Lord Advocate in case involving insanity) or section 375ZD or 375ZE (equivalent provisions as respects summary procedure) of that Act of 1975;”.

65 Legal aid in criminal appeals

- (1) Section 25 of the Legal Aid (Scotland) Act 1986 (legal aid in criminal appeals) shall be amended in accordance with subsections (2) to (5) below.

- (2) In subsection (1)—

- (a) after the word “sentence” there shall be inserted “, other disposal”; and
- (b) at the end there shall be inserted the words “other than an appeal in relation to which section 22(1)(dc) of this Act applies.”.

- (3) In subsection (2)—

- (a) the words “the Board is satisfied” shall cease to have effect;
- (b) in paragraph (a), after the word “below,” there shall be inserted “the Board is satisfied”; and
- (c) for paragraph (b) and the preceding “and” there shall be substituted—
 - “(b) in the case of an appeal under section 228(1) or 442(1)(a) of the Criminal Procedure (Scotland) Act 1975, leave to appeal is granted; and
 - (c) in the case of an appeal under any provision of that Act other than sections 228(1) and 442(1)(a), where the applicant is the appellant, the Board is satisfied that in all the circumstances of the case it is in the interests of justice that the applicant should receive criminal legal aid.”.

- (4) After subsection (2) there shall be inserted the following subsection—

“(2A) Where the Board has refused an application for criminal legal aid on the ground that it is not satisfied as mentioned in subsection (2)(c) above the High Court may, at any time prior to the disposal of an appeal, whether or not on application made to it, notwithstanding such refusal determine that it is in the interests of justice that the applicant should receive criminal legal aid in connection with the appeal, and the Board shall forthwith make such legal aid available to him.”.

- (5) For subsection (5) there shall be substituted the following subsections—

- “(5) Subsections (2)(a), (3) and (4) above shall apply to an application for criminal legal aid in connection with consideration under section 230A, 442ZA or 453AA of the Criminal Procedure (Scotland) Act 1975 whether to grant leave to appeal as if—
- (a) in subsection (2)(a), for the words “of the appeal” there were substituted “in connection with consideration whether to grant leave to appeal”; and
 - (b) in subsection (4), after the word “is” there were inserted “, subject to leave being granted,”.

- (6) Subsections (2)(a) and (c) and (2A) to (4) above shall apply to an application for criminal legal aid in connection with a petition to the nobile officium of the High Court of Justiciary (whether arising in the course of any proceedings or otherwise) as they apply for the purposes of subsection (1) above.
- (7) Subsections (2)(a), (3) and (4) above shall apply to an application for criminal legal aid in connection with a reference by the Secretary of State under section 263 of the Criminal Procedure (Scotland) Act 1975 as they apply for the purposes of subsection (1) above.”.
- (6) In section 30(3) of that Act (application of section 25 of that Act to legal aid in contempt proceedings)—
 - (a) before the words “Section 25” there shall be inserted “Subsections (2)(a) and (c), (2A) to (4) and (6) of”;
 - (b) for the words “it applies” there shall be substituted “they apply”;
 - (c) after the word “sentence” there shall be inserted “, other disposal”;
 - (d) after the word “application” there shall be inserted the following paragraph—
 - “(za) in subsection (2A) of that section, the reference to the High Court shall include a reference to the Court of Session;”;
 - (e) in paragraph (b), for the word “(5)” there shall be substituted “(6)”.

66 Supervision and care of persons diverted from prosecution or subject to supervision requirement etc

In section 27(1) of the Social Work (Scotland) Act 1968 (supervision and care of persons put on probation or released from prisons etc.)—

- (a) after paragraph (a) there shall be inserted—
 - “(aa) making available to any children’s hearing such reports relating to persons aged 16 and 17 years in relation to the commission of an offence, as the hearing may require for the disposal of a case;
 - (ab) making available to any procurator fiscal or the Lord Advocate such reports as the procurator fiscal or the Lord Advocate may request in relation to persons who are charged with an offence;”;
- (b) after sub-paragraph (iv) of paragraph (b) there shall be inserted the following sub-paragraphs—
 - “(v) without prejudice to sub-paragraphs (i) to (iv) above, persons in their area who are subject to a supervision and treatment order made under section 174ZC(2)(d) or 375ZC(2)(d) of the Criminal Procedure (Scotland) Act 1975; and
 - (vi) persons in their area aged 16 and 17 years who are subject to a supervision requirement imposed in relation to the commission of any offence by that person; and
 - (vii) persons in their area who are charged with, but not prosecuted for, any offence and are referred to the local authority by the procurator fiscal or the Lord Advocate; and”.

67 Transfer of fine orders

- (1) Section 403 of the 1975 Act (transfer of fine orders), shall be amended as follows.
- (2) In subsection (3), at the beginning there shall be inserted the words “Subject to subsections (3A) and (3B) below,”.
- (3) After subsection (3) there shall be inserted the following subsections—
 - “(3A) Where—
 - (a) the court specified in a transfer of fine order is satisfied, after inquiry, that the offender is not residing within the jurisdiction of that court; and
 - (b) the clerk of that court, within 14 days of receiving the notice required by section 404(1) of this Act, sends to the clerk of the court which made the order notice to that effect,the order shall cease to have effect.
 - (3B) Where a transfer of fine order ceases to have effect by virtue of subsection (3A) above, the functions referred to in subsection (3) above shall again be exercisable by the court which made the order or, as the case may be, by the clerk of that court.”.

68 Liability of bankrupt to pay fines and compensation orders

In section 55(2) of the Bankruptcy (Scotland) Act 1985 (effect of discharge of bankrupt on certain liabilities), after paragraph (a) there shall be inserted the following paragraphs—

- “(aa) any liability to pay a fine imposed in a district court;
- (ab) any liability under a compensation order within the meaning of section 58 of the Criminal Justice (Scotland) Act 1980;”.

69 Child detainees unlawfully at large

For subsection (3) of section 40 of the Prisons (Scotland) Act 1989 (persons unlawfully at large) there shall be substituted the following subsection—

- “(3) In this section—
 - (a) any reference to a person sentenced to imprisonment shall be construed as including a reference to any person sentenced or ordered to be detained under section 205, 206 or 413 of the 1975 Act;
 - (b) any reference to a prison shall be construed as including a reference to a place where the person is liable to be detained under the sentence or order; and
 - (c) any reference to a sentence shall be construed as including a reference to an order under section 413 of that Act.”.