



Criminal Justice (Scotland) Act 1980

1980 CHAPTER 62

PART III

PENALTIES

40 Previous conviction deemed to be admitted

In section 357(1) of the 1975 Act (laying of previous convictions before court), in paragraph (c), for the words from " the judge ", where they occur for the second time, to the end there shall be substituted the words—

- “(i) in a case where the plea of guilty is tendered in writing the accused shall be deemed to admit any previous conviction set forth in the notice, unless he expressly denies it in the writing by which that plea is tendered;
- (ii) in any other case the judge or the clerk of court shall ask the accused whether he admits the previous conviction,

and if such admission is made or deemed to be made it shall be entered in the record of the proceedings.”.

41 Restriction on passing sentence of imprisonment or detention on person not legally represented

- (1) A court shall not pass a sentence of imprisonment or of detention in respect of any offence, nor impose imprisonment, or detention, under section 396(2) of the 1975 Act in respect of failure to pay a fine, on an accused who is not legally represented in that court and has not been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom, unless the accused either—
 - (a) applied for legal aid and the application was refused on the ground that he was not financially eligible; or
 - (b) having been informed of his right to apply for legal aid, and having had the opportunity, failed to do so.

- (2) The court shall, for the purpose of determining whether a person has been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom—
- (a) disregard a previous sentence of imprisonment which, having been suspended, has not taken effect under section 23 of the Powers of Criminal Courts Act 1973 or under section 19 of the Treatment of Offenders Act (Northern Ireland) 1968 ;
 - (b) construe detention as meaning—
 - (i) in relation to Scotland, detention in a young offenders institution or detention centre ;
 - (ii) in relation to England and Wales, borstal training or detention in a detention centre; and
 - (iii) in relation to Northern Ireland, detention in a young offenders centre.
- (3) Subsection (1) above does not affect the power of a court to pass sentence on any person for an offence the sentence for which is fixed by law.
- (4) In this section—
- " legal aid " means legal aid for the purposes of any part of the proceedings before the court;
- " legally represented " means represented by counsel or a solicitor at some stage after the accused is found guilty and before he is dealt with as referred to in subsection (1) above.

42 Restriction on passing sentence of imprisonment on person not previously so dealt with

- (1) A court shall not pass a sentence of imprisonment on a person of or over twenty-one years of age who has not been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom unless the court considers that no other method of dealing with him is appropriate; and for the purpose of determining whether any other method of dealing with such a person is appropriate the court shall obtain (from an officer of a local authority or otherwise) such information as it can about the offender's circumstances; and it shall also take into account any information before it concerning the offender's character and physical and mental condition.
- (2) Where a court of summary jurisdiction passes a sentence of imprisonment on any such person as is mentioned in subsection (1) above, the court shall state the reason for its opinion that no other method of dealing with him is appropriate, and shall have that reason entered in the record of the proceedings.
- (3) Subsections (2) and (3) of section 41 of this Act shall apply for the purposes of this section as they apply for the purposes of that section.

43 Punishment for murder

For section 205 of the 1975 Act there shall be substituted the following sections—

“205 Punishment for murder.

- (1) Subject to subsections (2) and (3) below, a person convicted of murder shall be sentenced to imprisonment for life.

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

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

- (1) On sentencing any person convicted of murder a judge may make a recommendation as to the minimum period which should elapse before, under section 61 of the Criminal Justice Act 1967, the Secretary of State releases that person on licence.
- (2) When making a recommendation under subsection (1) above, the judge shall state his reasons for so recommending.
- (3) Notwithstanding the proviso to subsection (1) of section 228 of this Act it shall be competent to appeal under paragraph (b) or (c) of that subsection against a recommendation made under subsection (1) above; and for the purposes of such appeal (including the High Court's power of disposal under section 254(3)(b) of this Act) the recommendation shall be deemed part of the sentence passed on conviction.”.

44 Detention and release on licence of children convicted on indictment

For section 206 of the 1975 Act there shall be substituted the following section—

“206 Detention and release on licence of children convicted on indictment.

- (1) Subject to section 205 of this Act, where a child is convicted and the court is of the opinion that no other method of dealing with him is appropriate, it may sentence him to be detained for a period which it shall specify in the sentence; and the child shall during that period be liable to be detained in such place and on such conditions as the Secretary of State may direct.
- (2) Subject to subsection (3) below, the Secretary of State may release on licence, on such conditions as may for the time being be specified in the licence, a person detained under subsection (1) above.
- (3) Where a person has been sentenced under subsection (1) above to be detained for a period exceeding 18 months, the Secretary of State—
 - (a) shall not release him on licence under subsection (2) above except on the recommendation of the Parole Board for Scotland (in this section referred to as " the Board "); and
 - (b) shall consult the Board with regard to the inclusion or subsequent insertion of any condition in the licence or the variation or cancellation of any such condition ; but for the purposes of this paragraph the Secretary of State shall be treated as having consulted the Board about

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

a proposal to include, insert, vary or cancel a condition in any case if he has consulted the Board about the implementation of proposals of that description generally or in that class of case.

- (4) A licence granted under subsection (2) above shall, unless previously revoked under subsection (5) below, remain in force until the expiry of the period of—
- (a) detention specified by the court under subsection (1) above; or
 - (b) 12 months from the date of release under the licence,
- whichever is the later.

- (5) The Secretary of State may—
- (a) on the recommendation of the Board; or
 - (b) at his own instance, where it appears to him to be in the public interest to do so before consultation with the Board is practicable,

revoke a licence granted under subsection (2) above and recall the person released under the licence to a place in which the Secretary of State directs that he should be detained; and on such revocation, the person shall be liable to be detained in pursuance of his sentence, and, if at large, shall be deemed to be unlawfully at large.

- (6) The Secretary of State shall inform a person recalled under subsection (5) above of the reasons for his recall, so that the person may make representations in writing with respect to his recall to the Board; and the Board may, on receipt of such representations, require the Secretary of State to release him on licence forthwith.

- (7) Subject to subsection (6) above, a person detained in pursuance of subsection (5) above shall remain in detention until the expiry of the period of—
- (a) detention specified by the court under subsection (1) above; or
 - (b) 3 months from the date of the commencement of his detention in pursuance of the said subsection (5), whichever is the later:

Provided that the Secretary of State may, at any time before the expiry of the period referred to in paragraph (a) above, again release him on licence.”.

45 Detention of young offenders

- (1) For section 207 of the 1975 Act there shall be substituted the following provision—

“207 Detention of young offenders.

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

- (3) The court shall not under subsection (2) above impose detention on a person unless it is of the opinion that no other method of dealing with him is appropriate ; and the court shall state its reasons for that opinion, and, except in the case of the High Court, those reasons shall be entered in the record of proceedings.
- (4) To enable the court to form an opinion under subsection (3) above, it shall obtain (from an officer of a local authority or otherwise) such information as it can about the offender's circumstances; and it shall also take into account any information before it concerning the offender's character and physical and mental condition.
- (5) Subject to subsections (6) and (8) below—
- (a) in a case where a court by way of sentence imposes detention, under subsection (2) above, on a male person for a period of at least 28 days but not exceeding 4 months the court shall order that the detention be in a detention centre; and
 - (b) in any other case it shall order that the detention be in a young offenders institution.
- (6) Where detention in a detention centre would be required by subsection (5) above but the court is of the opinion that—
- (a) the convicted person is physically or mentally unfit to be detained in a detention centre; or
 - (b) for any special reason, which the court shall state and which shall, except in the case of the High Court, be entered in the record of the proceedings, a young offenders institution is a more appropriate place of detention,
- it may under this subsection order that the detention be in a young offenders institution.
- (7) Where detention imposed under subsection (5) above is (either or both)—
- (a) for a period of less than 28 days ;
 - (b) imposed other than by way of sentence,
- but the convicted person is already detained in a detention centre, the detention under the said subsection (5) shall, notwithstanding the terms of the order made under that subsection by the court, be in a detention centre.
- (8) Periods of detention imposed at the same time and ordered to be consecutive shall, for the purposes of this section, be treated as a single period of detention.
- (9) Where a person is serving a period of detention in a detention centre when a period of detention is ordered which is—
- (a) consecutive to the period being served and the periods together total more than 5 months; or
 - (b) concurrent with the period being served and is for more than 5 months,
- the convicted person shall, notwithstanding the terms of any order made under subsection (5) above, be transferred to a young offenders institution to serve the remainder of that total period or as the case may be of those concurrent periods.

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- (10) Where the Secretary of State is satisfied that a person is physically or mentally unfit to be detained in a detention centre, he may transfer such person to a young offenders institution.
- (11) Section 20 of the Prisons (Scotland) Act 1952 (remission for good conduct) and sections 59 to 62 and 64 of the Criminal Justice Act 1967 (release on licence) shall apply to a person sentenced under this section as those enactments apply to a person sentenced to a period of imprisonment.”;
- and the same provision shall (with the appropriate section number) be substituted for section 415 of the 1975 Act, except that in subsection (2) of the provision the words " section 205(2) and (3) of this Act and to "; shall be omitted.
- (2) Sections 10 (transfer to prison of persons over 21), 12 (supervision of persons released from young offenders institutions) and 51 (interpretation) of the Criminal Justice (Scotland) Act 1963 shall have effect subject to the amendments set out in Schedule 5 to this Act.
- (3) In the 1975 Act, sections 204 and 414 (Borstal training) and sections 209 and 418 (detention in detention centre) shall cease to have effect.
- (4) Without prejudice to any specific amendment made by this Act, in Scotland a reference in any enactment to which this subsection applies—
- (a) to a Borstal institution, shall be construed as a reference to a young offenders institution ; and
 - (b) to a period of training in a Borstal institution, shall be construed as a reference to a period of detention in a young offenders institution.
- (5) The enactments to which subsection (4) above applies are—
- (a) any Act passed before, or during the same session as, this Act; and
 - (b) any subordinate legislation made before the commencement of this Act;
- and in this subsection " Act" and " subordinate legislation " have the same meanings as in the Interpretation Act 1978.

46 Increase of certain penalties and other sums

- (1) In the 1975 Act—
- (a) in section 186(2)(a) (breach of probation order), for the words " £20 " there shall be substituted the words " £50 ";
 - (b) in section 312(z) (form of charge in complaint) for the words " £25 " there shall be substituted the words " £200 ";
 - (c) in section 344 (1) (penalty for contempt), for the words "£25" and "20 days" there shall be substituted respectively the words " £50 " and " 21 days " ;
 - (d) in section 3 87(2) (a) (breach of probation order), for the words " £20 " there shall be substituted the words " £50 ";
 - (e) in section 435(e) (expenses), for the words " £12 " there shall be substituted the words " £200 " and for the words " £3 ", in both places where they occur, there shall be substituted the words " £50 ";
 - (f) in section 453(3) (expenses to appellant on conviction being set aside), for the words " £5.25 " there shall be substituted the words " £20 ".
- (2) In section 193 of the 1975 Act (power to mitigate penalties), in subsection (2) for the words " an amount of £150 ", and in subsection (3) for the words "the amount of £150

", there shall be substituted in each case the words " the prescribed sum within the meaning of section 289B of this Act ".

47 Application to solemn procedure of summary procedure provisions relating to fines

For section 194 of the 1975 Act there shall be substituted the following section—

“194 Application of summary procedure provisions relating to fines.

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

48 Enforcement of High Court fine by sheriff

In section 196 of the 1975 Act (fines may be enforced in other district), the existing words shall be subsection (1) of that section and after that subsection there shall be inserted the following subsection—

- “(2) A fine imposed by the High Court shall be remitted for enforcement to, and shall be enforceable as if it had been imposed by—
- (a) where the person upon whom the fine was imposed resides in Scotland, the sheriff for the district where that person resides ;
 - (b) where that person resides outwith Scotland, the sheriff before whom he was brought for examination in relation to the offence for which the fine was imposed.”.

49 Power to remit fines

After section 395 of the 1975 Act there shall be inserted the following section—

“395A Power to remit fines.

- (1) A fine may at any time be remitted in whole or in part by—
- (a) in a case where a transfer of fine order under section 403 of this Act is effective and the court by which payment is enforceable is, in terms of the order, a court of summary jurisdiction in Scotland, that court; or
 - (b) in any other case, the court which imposed the fine or (where that court was the High Court) by which payment was first enforceable.
- (2) Where the court remits the whole or part of a fine after imprisonment has been imposed under section 396(2) or (4) of this Act, it shall also remit the whole period of imprisonment or, as the case may be, reduce the period by an amount which bears the same proportion to the whole period as the amount remitted bears to the whole fine.
- (3) The power conferred by subsection (1) above shall be exerciseable without requiring the attendance of the accused.”

50 Maximum period of imprisonment for non-payment of fine in summary proceedings

In section 407 of the 1975 Act (imprisonment for non-payment of fine), for subsection (1) there shall be substituted the following subsections—

- “(1) Subject to sections 396 to 401 of this Act
- (a) a court of summary jurisdiction may, when imposing a fine, impose a period of imprisonment in default of payment; or
 - (b) where no order has been made under paragraph (a) above and a person fails to pay a fine, or any part or instalment of a fine, by the time ordered by the court (or, where section 396(2) of this Act applies, immediately) the court may impose a period of imprisonment for such failure, whether or not the fine is imposed under an enactment which makes provision for its enforcement or recovery.
- (1A) Subject to the following subsections of this section, the maximum period of imprisonment which may be imposed under subsection (1) above or for failure to find caution, shall be as follows—

| <i>Amount of Fine or of Caution</i> | <i>Maximum Period of Imprisonment</i> |
|---|---------------------------------------|
| Not exceeding £25 | 7 days |
| Exceeding £25 but not exceeding £50 | 14 days |
| Exceeding £50 but not exceeding £200 | 30 days |
| Exceeding £200 but not exceeding £500 | 60 days |
| Exceeding £500 but not exceeding £1,000 | 90 days |

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

| <i>Amount of Fine or of Caution</i> | <i>Maximum Period of Imprisonment</i> |
|---|---------------------------------------|
| Exceeding £1,000 but not exceeding £2,500 | 6 months |
| Exceeding £2,500 but not exceeding £5,000 | 9 months |
| Exceeding £5,000 | 12 months |

- (1B) Where an offender is fined on the same day before the same court for offences charged in the same complaint or in separate complaints, the amount of the fine shall, for the purposes of this section, be taken to be the total of the fines imposed.
- (1C) Where a court has imposed a period of imprisonment in default of payment of a fine, and—
- (a) an instalment of the fine is not paid at the time ordered; or
 - (b) part only of the fine has been paid within the time allowed for payment,
- the offender shall be liable to imprisonment for a period which bears to the period so imposed the same proportion, as nearly as may be, as the amount outstanding at the time when warrant is issued for imprisonment of the offender in default bears to the original fine.
- (1D) Where no period of imprisonment in default of payment of a fine has been imposed and—
- (a) an instalment of the fine is not paid at the time ordered; or
 - (b) part only of the fine has been paid within the time allowed for payment,
- the offender shall be liable to imprisonment for a maximum period which bears, as nearly as may be, the same proportion to the maximum period of imprisonment which could have been imposed by virtue of the Table in subsection (1A) above in default of payment of the original fine as the amount outstanding at the time when he appears before the court bears to the original fine.”.

51 Execution in different parts of United Kingdom of warrants for imprisonment for non payment of fine

After section 38 of the Criminal Law Act 1977 there shall be inserted the following section—

“38A Execution in different parts of United Kingdom of warrants for imprisonment for non-payment of fine.

- (1) Subject to subsection (6) below, a person against whom an extract conviction is issued in Scotland for imprisonment in default of payment of a fine may be arrested—
- (a) in England and Wales, by any constable acting within his police area ;
 - (b) in Northern Ireland, by any member of the Royal Ulster Constabulary or the Royal Ulster Constabulary Reserve ;
- and subsections (4) and (5) of section 159 of the Magistrates' Courts Act (Northern Ireland) 1964 (execution without possession of the warrant and execution on Sunday) shall apply to the execution in Northern Ireland of any

such extract conviction as those subsections apply in relation to the execution of a warrant for arrest.

- (2) Subject to subsection (6) below, a person against whom there has been issued in England, Wales or Northern Ireland a warrant committing him to prison in default of payment of a sum adjudged to be paid by a conviction may be arrested in Scotland, by any constable appointed for a police area, in like manner as if the warrant were an extract conviction for imprisonment issued in Scotland in default of payment of a fine.
- (3) A person arrested by virtue of subsection (1) above under an extract conviction or by virtue of subsection (2) above under a warrant of commitment may be detained under it in any prison in the part of the United Kingdom in which he was arrested; and while so detained he shall be treated for all purposes as if he were detained under a warrant of commitment or extract conviction issued in that part of the United Kingdom.
- (4) An extract conviction or a warrant of commitment may be executed by virtue of this section whether or not it has been endorsed under section 4 of the Summary Jurisdiction (Process) Act 1881 or under section 27 of the Petty Sessions (Ireland) Act 1851.
- (5) In this section—
- ' fine' includes any sum treated by any enactment as a fine for the purposes of its enforcement and any sum to be found as caution;
 - ' imprisonment' includes, in the case of a person who is under the age of 21 years, detention ;
 - ' part of the United Kingdom' means England and Wales, Scotland or Northern Ireland; ' prison' means—
 - (i) in the case of a person who is under the age of 21 years arrested in Scotland, a young offenders institution ; and
 - (ii) in the case of a person under that age arrested in Northern Ireland, a young offenders centre; and
 - ' sum adjudged to be paid by a conviction' has the meaning given by section 150(3) of the Magistrates' Courts Act 1980 or, in Northern Ireland, section 169(2) of the Magistrates' Courts (Northern Ireland) Act 1964.
- (6) This section shall not apply to the arrest of persons under the age of 17 years.”.

52 Recovery of fine or caution by civil diligence

Where proceedings by civil diligence for recovery of a fine or caution are adopted, imprisonment for non-payment of the fine or for failure to find such caution shall remain competent, and such proceedings by civil diligence may be authorised after the court has imposed imprisonment for (or in the event of) the non-payment or the failure but before imprisonment has followed such imposition; and accordingly in section 411 of the 1975 Act

- (a) subsection (2) shall cease to have effect; and
- (b) in the proviso to subsection (3), for the words " court has imposed imprisonment in default of " there shall be substituted the words " offender has been imprisoned in consequence of his having defaulted in ".

53 Availability of probation after deferred sentence

- (1) In section 384(1) of the 1975 Act (probation), after the word " conviction " there shall be inserted the words—

“(except in a case to which section 432 of this Act applies)”.

- (2) In section 432 of the said Act (deferred sentence), at the end there shall be added the words—

“; and the fact that the accused has been convicted shall not prevent the court from making, in due course, a probation order under section 384 of this Act.”.

54 Dealing with person who commits further offence while sentence is deferred

In each of sections 219 and 432 of the 1975 Act (deferred sentence), the existing words shall be subsection (1) of the section and after that subsection there shall be inserted the following subsections—

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

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

55 Disqualification and endorsement where orders for probation or for absolute discharge are made

In the Road Traffic Act 1972, in each of sections 93 (disqualification on conviction of certain offences) and 101 (endorsement of licences), there shall be added at the end the following subsection—

“(8) Where a person is charged with any offence in Scotland mentioned in this section, and the court makes an order in respect of that offence under section 182 or 383 (absolute discharge) or 183 or 384 (probation) of the Criminal Procedure (Scotland) Act 1975, then, for the purposes of this section, he shall be treated as if he had been convicted of such an offence and section 191 or, as the case may be, section 392 of that Act shall not apply.”.

56 Penalties for drunkenness

- (1) In section 70 of the Licensing (Scotland) Act 1903 (penalties for drunkenness, etc.)—

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

- (a) in the first paragraph of subsection (1) for the words from " and may be taken " to the end of that paragraph there shall be substituted the words " and shall be liable on summary conviction to a fine not exceeding £50 ";
- (b) in the second paragraph of that subsection for the words from " forty " to the end of that paragraph there shall be substituted the words " £50 ";
- (c) after that subsection there shall be inserted the following subsection—
 - “(1A) A constable may arrest without warrant any person who he has reasonable grounds for suspecting is committing an offence under subsection (1) above.”; and
- (d) in subsection (2) for the words from " forty " to the end of the first sentence there shall be substituted the words " £50 ".

(2) Section 382 of the Burgh Police (Scotland) Act 1892 shall cease to have effect.

57 Penalty for second conviction of assault on constable

In section 41(1)(ii) of the Police (Scotland) Act 1967 (assaults on constables, etc.), at the end there shall be added the words " or to a fine not exceeding the prescribed sum within the meaning of section 289B of the Criminal Procedure (Scotland) Act 1975, or to both. ".