



# Criminal Procedure (Scotland) Act 1975

## 1975 CHAPTER 21

### PROCEDURE PRIOR TO TRIAL

### CONVICTION AND SENTENCE

*Miscellaneous provisions as to conviction, sentence, etc.*

#### **216 Art and part guilt of statutory offence.**

[<sup>F1</sup>(1)] A person may be convicted of, and punished for, contravention of any [<sup>F2</sup>enactment], notwithstanding that he was guilty of such contravention as art and part only.

[<sup>F3</sup>(2) Without prejudice to subsection (1) above or to any express provision in any enactment having the like effect to this subsection, any person who aids, abets, counsels, procures or incites any other person to commit an offence against the provisions of any enactment shall be guilty of an offence and shall be liable on conviction, unless the enactment otherwise requires, to the same punishment as might be imposed on conviction of the first-mentioned offence.]

#### **Textual Amendments**

- F1** S. 216 renumbered as s. 216(1) by virtue of [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a), 64(1)(2)**
- F2** Word substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a), 64(1)(2)**
- F3** S. 216(2) inserted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a), 64(1)(2)**

#### **217 Form of sentence.**

- (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.
- (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

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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.

#### [<sup>F4</sup>217A Sentence following guilty plea.

In determining what sentence to pass on, or what other disposal or order to make in relation to, an offender who has pled guilty to an offence, a court may take into account—

- (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and
- (b) the circumstances in which that indication was given.]

#### Textual Amendments

- F4** S. 217A inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 33; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

#### 218 Consideration of time spent in custody.

[<sup>F5</sup>(1)] A court, in passing a sentence of imprisonment or detention . . . <sup>F6</sup> on a person for any offence, shall

- [<sup>F7</sup>(a)] 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 [<sup>F8</sup>or spent in custody awaiting extradition to the United Kingdom;
- (b) specify the date of commencement of the sentence; and
- (c) if that person—
  - (i) has spent a period of time in custody on remand awaiting trial or sentence; or
  - (ii) is an extradited prisoner for the purposes of this section,
 and the date specified under paragraph (b) above is not earlier than the date on which sentence is passed, state its reasons for not specifying an earlier date.]

[<sup>F9</sup>(2) A prisoner is an extradited prisoner for the purposes of this section if—

- (a) he was tried for the offence in respect of which his sentence of imprisonment was imposed—
    - (i) after having been extradited to the United Kingdom; and
    - (ii) without having first been restored to the state from which extradited or having had an opportunity of leaving the United Kingdom; and
  - (b) he was for any period kept in custody while awaiting such extradition.
- (3) In this section “extradited to the United Kingdom” means returned to the United Kingdom—
- (a) in pursuance of extradition arrangements (as defined in section 3 of the Extradition Act 1989);

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- (b) under any law which corresponds to that Act and is a law of a designated Commonwealth country (as defined in section 5(1) of that Act);
- (c) under that Act as extended to a colony or under any corresponding law of a colony; or
- [<sup>F10</sup>(cc) in pursuance of arrangements with a foreign state in respect of which an Order in Council under section 2 of the Extradition Act 1870 is in force;]
- (d) in pursuance of a warrant of arrest endorsed in the Republic of Ireland under the law of that country corresponding to the Backing of Warrants (Republic of Ireland) Act 1965.]

#### Textual Amendments

- F5** S. 218 renumbered s. 218(1) (18.9.1993) by 1993 c. 9, s. 41(4) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), Sch. 2
- F6** Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 8 and S.I. 1983/1580, art. 3
- F7** Word in s. 218 inserted (18.9.1993) by 1993 c. 9, s. 41(2) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), Sch. 2
- F8** Words in s. 218 inserted (18.9.1993) by 1993 c. 9, s. 41(3) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), Sch. 2
- F9** S. 218(2)(3) inserted (18.9.1993) by 1993 c. 9, s. 41(5) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), Sch. 2
- F10** S. 218(3)(cc) inserted (3.2.1995) by 1994 c. 33, s. 168(1), Sch. 9 para. 48(2); S.I. 1995/127, art. 2(1), Sch. 1 Appendix A (subject to transitional provisions in art. 2(2)(3))

## 219 Deferred sentence.

[<sup>F11</sup>(1)] It shall be competent for a court to defer sentence after conviction for a period and on such conditions as the court may determine.

[<sup>F12</sup>(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.]

#### Textual Amendments

- F11** Word inserted by virtue of Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 54
- F12** S. 219(2) inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 54

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## 220 Capital sentence not competent under this Act.

A capital sentence shall not be competent under this Act.

## 221 No penal servitude or hard labour.

- (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 [<sup>F13</sup>three 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.

### Textual Amendments

**F13** Words substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a), 58(3)**

## 222 No fees exigible.

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.

<sup>F14</sup>223 .....

### Textual Amendments

**F14** [S. 223](#) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117, Sch. 6 Pt. 1 para. 181\(2\)](#), **Sch. 7 Pt. I**; [S.I. 1996/517, arts. 3\(2\), 4-6](#), **Sch. 2**

## [<sup>F15</sup>223A] Disqualification in Scotland where vehicle used to commit offence.

- (1) Where a person is convicted of an offence (other than one triable only summarily) and the court which passes sentence is satisfied that a motor vehicle was used for the purpose of committing, or facilitating the commission of that offence, the court may order him to be disqualified for such period as the court thinks fit from holding or obtaining a licence to drive a motor vehicle granted under Part III of the Road Traffic Act 1988.

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- (2) A court which makes an order under this section disqualifying a person from holding or obtaining a licence shall require him to produce any such licence held by him and its counterpart.
- (3) 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.
- (4) In relation to licences which came into force before 1st June 1990, the reference in subsection (2) above to the counterpart of a licence shall be disregarded.]

**Textual Amendments**

**F15** S. 223A inserted (1.7.1992) by [Road Traffic Act 1991 \(c.40\), s. 39](#); S.I. 1992/1286, art. 2, [Sch.](#)

**224 Warrant of search for forfeited articles.**

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,

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

<sup>F16</sup>**225** .....

**Textual Amendments**

**F16** Ss. 225, 226, 227 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117, Sch. 6 Pt. I para. 76, Sch. 7 Pt. I](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)

<sup>F17</sup>**226** .....

**Textual Amendments**

**F17** Ss. 225, 226, 227 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117, Sch. 6 Pt. I para. 76, Sch. 7 Pt. I](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)

<sup>F18</sup>**227** .....

**Textual Amendments**

**F18** Ss. 225, 226, 227 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117, Sch. 6 Pt. I para. 76, Sch. 7 Pt. I](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)

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[<sup>F19</sup>**227A**Correction of entries.

- (1) Subject to the provisions of this section, it shall be competent to correct an entry in—
  - (a) the record of proceedings in a solemn prosecution; or
  - (b) the extract of a sentence passed or an order of court made in such proceedings, in so far as that entry constitutes an error of recording or is incomplete.
- (2) Such entry may be corrected—
  - (a) by the clerk of the court, at any time before either the sentence (or order) of the court is executed or, on appeal, the proceedings are transmitted to the Clerk of Justiciary;
  - (b) by the clerk of the court, under the authority of the court which passed the sentence or made the order, at any time after the execution of the sentence (or order) of the court but before such transmission as is mentioned in paragraph (a) above; or
  - (c) by the clerk of the court under the authority of the High Court in the case of a remit under subsection (4)(b) below.
- (3) A correction in accordance with paragraph (b) or (c) of subsection (2) above shall be intimated to the prosecutor and to the former accused or his solicitor.
- (4) Where, during the course of an appeal, the High Court becomes aware of an erroneous or incomplete entry, such as is mentioned in subsection (1) above, the court—
  - (a) may consider and determine the appeal as if such entry were corrected; and
  - (b) either before or after the determination of the appeal, may remit the proceedings to the court of first instance for correction in accordance with subsection (2)(c) above.
- (5) Any correction under subsections (1) and (2) above by the clerk of the court shall be authenticated by his signature and, if such correction is authorised by a court, shall record the name of the judge or judges authorising such correction and the date of such authority.]

**Textual Amendments**

**F19** S. 227A inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 54

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act certain function transferred. by [1994 c. 39 s. 127\(1\)128](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 168(c)(ii) amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(6\)\(b\)](#)
- s. 364(c)(ii) amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(14\)\(b\)](#)
- s. 413(3) (defn.of "the appropriate local authority") para. (a)(b) amended by [1994 c. 39 Sch. 13 para. 97\(5\)](#)
- s. 413(3) (defns. of "care" and "the 1968 Act") repealed (prosp.) by [1995 c. 36 s. 105\(4\)\(5\)Sch. 4 para. 24\(17\)\(b\)\(i\)Sch. 5](#)
- s. 462 (defns. of "child" "children's hearing" "place of safety" "residential establishment" and "supervision requirement") amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(18\)](#)
- s. 462 (defns. of "crime" and "prosecutor") applied (prosp.) by [1995 c. 36 s. 53\(7\)](#)