



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PROCEDURE PRIOR TO TRIAL

Procedure at trial involving children

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

No child under 14 years of age (other than an infant in arms) shall be permitted to be present in court during the trial of any other person charged with an offence, or during any proceedings preliminary thereto, except during such time as his presence is required as a witness or otherwise for the purposes of justice; and any child present in court when under this section he is not permitted to be so shall be ordered to be removed:

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

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

(1) Where, in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, a person who, in the opinion of the court, is a child is called as a witness, the court may direct that all or any persons, not being

- [^{F1}(a) members or officers of the court;
 - (b) parties to the case before the court, their counsel or solicitors or persons otherwise directly concerned in the case;
 - (c) bona fide representatives of news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings; or
 - (d) such other persons as the court may specially authorise to be present,
- shall be excluded from the court during the taking of the evidence of that witness.]

Provided that nothing in this section shall authorise the exclusion of bona fide representatives of a newspaper or news agency.

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- (2) The powers conferred on a court by this section shall be in addition and without prejudice to any other powers of the court to hear proceedings in camera.

Textual Amendments

- F1** S. 166(1)(a)-(d) substituted for words in s. 166(1) (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. 1 para. 64**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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

Where, in any proceedings relating to any of the offences mentioned in Schedule 1 to this Act, the court is satisfied that the attendance before the court of any person under the age of 17 years in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of that person.

168 Power of court, in respect of certain offences against a child, to refer child to ^[F2]Principal Reporter].

Any court by or before which a person is convicted of having ^[F3]committed any offence—

- (a) under section 21 of the ^{M1}Children and Young Persons (Scotland) Act 1937;
- (b) mentioned in Schedule 1 to this Act; or
- (c) in respect of a ^[F4]female person aged 17 years or over which constitutes the crime of incest,

may refer—

- (i) the child in respect of whom the offence mentioned in paragraph (a) or (b) above has been committed; or
- (ii) any child who is, or who is likely to become, a member of the same household as the person who has committed the offence mentioned in paragraph (b) or (c) above ^[F5]or the person in respect of whom the offence so mentioned was committed],

to the ^[F6]Principal Reporter]] and certify that the said offence shall be a ground established for the purposes of ^[F7]Chapter 3 of Part II of the Children ^{M2} (Scotland) Act 1995].

Textual Amendments

- F2** S. 168: words in sidenote substituted (1.4.1996) by virtue of 1994 c. 39, s. 180(1), **Sch. 13 para. 97(8)** (with s. 74(4)); S.I. 1996/323, **art. 4(1)(b)(c)**
- F3** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 34**
- F4** Word in s. 168(c) repealed (*prosp.*) by 1995 c. 36, s. 105(1)(4)(5), Sch. 4 para. 24(6)(a), **Sch. 5**; (with s. 103(1))
- F5** Words in s. 168(c)(ii) inserted (*prosp.*) by 1995 c. 36, s. 105(1)(4), **Sch. 4 para. 24(6)(b)** (with s. 103(1))
- F6** Words in s. 168 substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 97(2)** (with s. 128(8)); S.I. 1996/323, **art. 4(1)(b)(c)**

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F7 Words in s. 168 substituted (*prosp.*) by 1995 c. 36, s. 105(1)(4), **Sch. 4 para. 24(6)(c)** (with s. 103(1))

Marginal Citations

M1 1937 c. 37(20).

M2 1995 c. 36

[^{F8}169 Restrictions on report of proceedings involving person under 16.

(1) No newspaper report of any proceedings in a court shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any person under the age of 16 years concerned in the proceedings, either—

- (a) as being a person against or in respect of whom the proceedings are taken; or
- (b) as being a witness therein;

nor shall any picture which is, or includes, a picture of a person under the age of 16 years so concerned in the proceedings be published in any newspaper in a context relevant to the proceedings:

Provided that, in any case—

- (i) where the person is concerned in the proceedings as a witness only and no one against whom the proceedings are taken is under the age of 16 years, the foregoing provisions of this subsection shall not apply unless the court so directs;
 - (ii) the court may at any stage of the proceedings if satisfied that it is in the public interest so to do, direct that the requirements of this section (including such requirements as applied by a direction under paragraph (i) above) shall be dispensed with to such extent as the court may specify;
 - (iii) the Secretary of State may, after completion of the proceedings, if so satisfied by order dispense with the said requirements to such extent as may be specified in the order.
- (2) This section shall, with the necessary modifications, apply in relation to sound and television [^{F9}programmes included in a programme service (within the meaning of the Broadcasting Act 1990)] as it applies in relation to newspapers.
- (3) A person who publishes matter in contravention of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding [^{F10}level 4 on the standard scale].
- (4) In this section, references to a court shall not include a court in England, Wales or Northern Ireland.]

Textual Amendments

F8 S. 169 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 22, **Sch. 6 para. 2**

F9 Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1), **Sch. 20 para. 21**

F10 Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 46, (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289G and (N.I.) 1984/703, (N.I. 13), art. 5

170 Age of criminal responsibility.

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

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171 Presumption and determination of age of child.

- (1) Where a person charged with an offence is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a child, the court shall make due inquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case, but an order or judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court, and the age presumed or declared by the court to be the age of the person so brought before it shall, for the purposes of this Act or the ^{M3}Children and Young Persons (Scotland) Act 1937, be deemed to be the true age of that person, and, where it appears to the court that the person so brought before it has attained the age of 17 years, that person shall for the purposes of this Act or the ^{M4}Children and Young Persons (Scotland) Act 1937 be deemed not to be a child.
- (2) The court in making any inquiry in pursuance of the foregoing subsection shall have regard to the application of the provisions of section 30(1) of the ^{M5}Social Work (Scotland) Act 1968 but an order or judgment of the court shall not be invalidated by any subsequent proof that the court was not informed that at the material time the person was subject to a supervision requirement or that his case had been referred to a children's hearing under Part V of that Act.
- (3) Where in any indictment for any offence under the ^{M6}Children and Young Persons (Scotland) Act 1937 or any of the offences mentioned in [^{F11}paragraphs [^{F12}(c)][^{F13}(d) and (e)] of Schedule 1 to this Act or any offence under section [^{F14}2A] 11(1) to (3) or 14 of the ^{M7}Sexual Offences (Scotland) Act 1976], it is alleged that the person by or in respect of whom the offence was committed was a child or was under or had attained any specified age, and he appears to the court to have been at the date of the commission of the alleged offence a child, or to have been under or to have attained the specified age, as the case may be, he shall for the purposes of this Act or the ^{M8}Children and Young Persons (Scotland) Act 1937 [^{F11}or the ^{M9}Sexual Offences (Scotland) Act 1976 be presumed] at that date to have been a child or to have been under or to have attained that age, as the case may be, unless the contrary is proved.
- (4) Where, in any indictment for any offence under the ^{M10}Children and Young Persons (Scotland) Act 1937 or any of the offences mentioned in Schedule 1 to this Act, it is alleged that the person in respect of whom the offence was committed was a child or was a young person, it shall not be a defence to prove that the person alleged to have been a child was a young person or the person alleged to have been a young person was a child in any case where the acts constituting the alleged offence would equally have been an offence if committed in respect of a young person or child respectively.
- (5) Where a person is charged with an offence under the ^{M11}Children and Young Persons (Scotland) Act 1937 in respect of a person apparently under a specified age, it shall be a defence to prove that the person was actually of or over that age.
- (6) In subsection (3) of this section, references to a child (other than a child charged with an offence) shall be construed as references to a child under the age of 17 years; but except as aforesaid references in this section to a child shall be construed as references to a child within the meaning of section 462 of this Act.

Textual Amendments

F11 Words substituted by [Sexual Offences \(Scotland\) Act 1976 \(c. 67, SIF 39:5\), s. 21, Sch. 1](#)

F12 Word substituted by [Incest and Related Offences \(Scotland\) Act 1986 \(c. 36, SIF 39:5\), s. 3\(2\), Sch. 1 para. 1](#)

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F13 Words substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 123, 170, Sch. 8 para. 16, **Sch. 15 para. 48**

F14 Words added by [Incest and Related Offences \(Scotland\) Act 1986 \(c. 36, SIF 39:5\)](#), s. 3(2), **Sch. 1 para. 1**

Marginal Citations

M3 [1937 c. 37\(20\)](#).

M4 [1937 c. 37\(20\)](#).

M5 [1968 c. 49\(81:3\)](#).

M6 [1937 c. 37\(20\)](#).

M7 [1976 c. 67\(39:5\)](#).

M8 [1937 c. 37\(20\)](#).

M9 [1976 c. 67\(39:5\)](#).

M10 [1937 c. 37\(20\)](#).

M11 [1937 c. 37\(20\)](#).

172 Welfare of child.

Every court in dealing with a child who is brought before it as an offender shall have regard to the welfare of the child and shall in a proper case take steps for removing him from undesirable surroundings.

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

- (1) Where a child who is not subject to a supervision requirement is charged with an offence and pleads guilty to, or is found guilty of, that offence the court—
 - (a) instead of making an order on that plea or finding, may remit the case to the ^[F15]Principal Reporter] to arrange for the disposal of the case by a children's hearing; or
 - (b) on that plea or finding may request the ^[F15]Principal Reporter] to arrange a children's hearing for the purposes of obtaining their advice as to the treatment of the child.
- (2) Where a court has acted in pursuance of paragraph (b) of the foregoing subsection, the court, after consideration of the advice received from the children's hearing may, as it thinks proper, itself dispose of the case or remit the case as aforesaid.
- (3) Where a child who is subject to a supervision requirement is charged with an offence and pleads guilty to, or is found guilty of, that offence the court ^[F16]dealing with the case if it is—
 - (a) the High Court, may; and
 - (b) the sheriff court, shall,request] the ^[F15]Principal Reporter] to arrange a children's hearing for the purpose of obtaining their advice as to the treatment of the child, and on consideration of that advice may, as it thinks proper, itself dispose of the case or remit the case as aforesaid.
- (4) Where a court has remitted a case to the ^[F17]Principal Reporter] under this section, the jurisdiction of the court in respect of the child shall cease, and his case shall stand referred to a children's hearing.
- (5) Nothing in the provisions of this section shall apply to a case in respect of an offence the sentence for which is fixed by law.

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Textual Amendments

- F15** Words in s. 173(1)(a)(b)(3) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 97(2)** (with s. 128(8)); S.I. 1996/323, **art. 4(1)(b)(c)**
- F16** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 35**
- F17** Words in s. 173(4) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 97(8)** (with s. 128(8)); S.I. 1996/323, **art. 4(1)(b)(c)**

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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\(7\)](#)