



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PROCEDURE PRIOR TO TRIAL

The Indictment

41 Indictment forms.

All prosecutions for the public interest before the High Court or before the sheriff sitting with a jury shall proceed on indictment in name of Her Majesty's Advocate, and such indictment may be in the forms set out in Schedule A to the ^{M1}Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form and shall be signed by the Lord Advocate or one of his deputed, or by a procurator fiscal, and the words "By Authority of Her Majesty's Advocate" shall be prefixed to the signature of such procurator fiscal.

Marginal Citations

M1 1887 c. 35(39:1).

[^{F1}42 Resignation, death or demission of office of Lord Advocate.

- (1) All indictments which have been raised by a Lord Advocate shall remain effective notwithstanding his subsequently having died or demitted office and may be taken up and proceeded with by his successor.
- (2) During any period when the office of Lord Advocate is vacant it shall be lawful to indict accused persons in the name of the Solicitor General then in office.
- (3) The advocates depute shall not demit office when a Lord Advocate dies or demits office but shall continue in office until their successors receive commissions.
- (4) The advocates depute and procurators fiscal shall have power, notwithstanding any vacancy in the office of Lord Advocate, to take up and proceed with any indictment which—

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- (a) by virtue of subsection (1) above, remains effective; or
 - (b) by virtue of subsection (2) above, is in the name of the Solicitor General.
- (5) For the purposes of this Act, where, but for this subsection, demission of office by one Law Officer would result in the offices of both being vacant, he or, where both demit office on the same day, the person demitting the office of Lord Advocate shall be deemed to continue in office until the warrant of appointment of the person succeeding to the office of Lord Advocate is granted.
- (6) The Lord Advocate shall enter upon the duties of his office immediately upon the grant of his warrant of appointment; and he shall as soon as is practicable thereafter take the oaths of office before any Secretary of State or any Lord Commissioner of Justiciary.]

Textual Amendments

- F1** [S. 42](#) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117\(1\)](#), [Sch. 6 Pt. I para. 18](#); [S.I. 1996/517, arts. 3\(2\), 4-6](#), [Sch. 2](#)

43 Naming of accused.

A person accused may be named and designed in an indictment according to the existing practice, or he may be named by the name given by him and designed as of the place given by him as his residence when he is examined on declaration, or he may be named by the name under which he is committed until liberated in due course of law, and it shall not be necessary to set forth any other name or names by which he may be known, or any other address or designation.

44 Nomen juris unnecessary.

It shall not be necessary in any indictment to specify by any nomen juris the crime which is charged, but it shall be sufficient that the indictment sets forth facts relevant and sufficient to constitute an indictable crime.

45 Case of two or more persons charged.

When in any indictment two or more persons are charged together with committing a crime, it shall not be necessary to allege that “both and each or one or other,” or that “all and each or one or more” of them committed the crime, or did or failed to do any particular act, but such alternatives shall be implied in all such indictments.

46 “Guilty, actor or art and part” unnecessary.

It shall not be necessary to state in any indictment that a person accused is “guilty, actor or art and part,” but such charge shall be implied in all indictments.

47 “All which or part” implied.

The customary conclusion of indictments formerly in use, commencing with the words “All which or part thereof,” shall be implied in all indictments though not set forth.

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48 Qualifying words to be implied.

It shall not be necessary in any indictment to allege that any act of commission or omission therein charged was done or omitted to be done “wilfully” or “maliciously,” or “wickedly and feloniously,” or “falsely and fraudulently,” or “knowingly,” or “culpably and recklessly,” or “negligently,” or in “breach of duty,” or to use such words as “knowing the same to be forged,” or “having good reason to know,” or “well knowing the same to have been stolen,” or to use any similar words or expressions qualifying any act charged, but such qualifying allegation shall be implied in every case.

[^{F2}48A Common law and statutory offences in same indictment.

It shall be competent to include in one indictment both common law and statutory charges.]

Textual Amendments

F2 Ss. 48A, 48B inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), Sch. 6 Pt. I para. 19; S.I. 1996/517, arts. 3(2), 4-6, Sch. 2

[^{F3}48B Description of offence in words of statute or order.

In an indictment the description of any offence in the words of the statute or order contravened, or in similar words, shall be sufficient.]

Textual Amendments

F3 Ss. 48A, 48B inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), Sch. 6 Pt. I para. 19; S.I. 1996/517, arts. 3(2), 4-6, Sch. 2

49 Quotation of statutes unnecessary.

It shall not be necessary in an indictment for a crime punishable under any Act of Parliament to quote the Act of Parliament or any part of it, but it shall be sufficient to allege that the crime was committed contrary to such Act of Parliament, and to refer to the Act and any section of the Act founded on without setting forth the enactment at length.

50 Latitude as to time and place.

- (1) The latitude formerly in use to be taken in stating time in indictments at the instance of Her Majesty’s Advocate shall be implied in all statements of time where an exact time is not of the essence of the charge.
- (2) The latitude formerly in use to be taken in stating any place in such indictments by adding to the word “at”, or to the word “in”, the words “or near”, or the words “or in the near neighbourhood thereof” or similar words, shall be implied in all statements of place where the actual place is not of the essence of the charge.

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- (3) Where the circumstances of the offence charged make it necessary to take an exceptional latitude in regard to time or place it shall not be necessary to set forth such circumstances in the indictment, or to set forth that the particular time or the particular place is to the prosecutor unknown:

Provided that where exceptional latitude is taken, the court shall, if satisfied that such exceptional latitude was not reasonable in the circumstances of the case, give such remedy to the person accused by adjournment of the trial or otherwise as shall seem just.

- [^{F4}(4) Notwithstanding subsection (3) above, nothing in any rule of law shall prohibit the amendment of an indictment to include a time outwith the exceptional latitude if it appears to the court that the amendment would not prejudice the accused.]

Textual Amendments

- F4** S. 50(4) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 20**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

51 Latitude as to quantities, persons, things or modes.

The latitude formerly in use to be taken in indictments in describing quantities by the words “or thereby”, or the words “or part thereof”, or the words “or some other quantity to the prosecutor unknown” or similar words, shall be implied in all statements of quantities; and the latitude formerly in use to be taken in stating details connected with the perpetration of any act regarding persons, things or modes by inserting general alternative statements followed by the words “to the prosecutor unknown” or similar words, shall be implied in every case.

52 Description of buildings, goods, money or other property.

Where in an indictment, whether raised under statute or at common law, buildings, goods, money or property of any other description are mentioned, it shall not be necessary to allege the property or possession thereof to be in any person, official, corporation or company, or that the same were not the property of the accused, and the allegation that the same were not the property of the accused shall be implied in all cases where it is essential to the criminality of the charge.

53 Description of persons, goods, etc.

Where in an indictment or any list or inventory relative thereto any person is referred to, it shall be sufficient to describe him by his name and ordinary address, and it shall not be necessary to describe him as “now or lately” residing at such address, but such words shall be implied, and where goods, articles or things require to be described, it shall be sufficient to describe them in general terms without specifying the materials of which they are made, or any particulars which distinguish them from other goods, articles or things of a similar kind except in cases in which such particulars are essential to the constitution of the crime charged.

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54 “Money” to include coin, bank notes and post office orders.

The word “money” when used in an indictment shall include [^{F5}cheques, banknotes, postal orders, money orders and foreign currency].

Textual Amendments

- F5** Words in s. 54 substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 21**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

55 Setting forth documents unnecessary.

Where in an indictment any document requires to be referred to, it shall not be necessary to set forth the document or any part of it in such indictment, but it shall be sufficient to refer to such document by a general description and, where it is to be produced, by the number given to it in the list of productions for the prosecution.

56 Declarations, etc., not averred.

It shall not be necessary to set forth in an indictment the fact that the accused person emitted a declaration, nor to set forth any productions that are to be used against him, but it shall be sufficient that they be entered in the list of productions to be used at the trial.

57 Indictments, etc., written or printed or partly so.

The principal record and service copies of indictments and all notices of citation, all lists of witnesses, productions and jurors, and all other official documents required in criminal prosecutions, may be either written or printed, or partly written and partly printed.

58 Authentication of alterations to indictment, etc.

- (1) Any deletion or correction made before service on the principal record or service copy of an indictment shall be sufficiently authenticated by the initials of any person who has signed, or could by law have signed, the same.
- (2) Any deletion or correction made on a service copy of an indictment, or on any notice of citation, postponement, adjournment or other notice required to be served on a person accused [^{F6}shall be sufficiently authenticated by the initials of any procurator fiscal or of the person serving the same..
- (3) Any deletion or correction made]

Textual Amendments

- F6** S. 58(3) and words in s. 58(2) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) for words by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 22**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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59 **Reset.**

Criminal resetting of property shall not be limited to the receiving of property taken by theft or robbery, but shall extend to the receiving of property appropriated by breach of trust and embezzlement and by falsehood fraud and wilful imposition; and under any indictment charging the resetting of property dishonestly appropriated by any of these means, it shall not be necessary to set forth any details of the crime by which the dishonest appropriation was accomplished, but it shall be sufficient to set forth that the person accused received such property, it having been dishonestly appropriated by theft or robbery, or by breach of trust and embezzlement, or by falsehood fraud and wilful imposition, as the case may be.

60 **Robbery, etc. to include reset, and theft to include breach of trust, etc.**

- (1) Under an indictment for robbery, or for theft, or for breach of trust and embezzlement, or for falsehood fraud and wilful imposition, a person accused may be convicted of reset.
- (2) Under an indictment for robbery, or for breach of trust and embezzlement, or for falsehood fraud and wilful imposition, a person accused may be convicted of theft.
- (3) Under an indictment for theft, a person accused may be convicted of breach of trust and embezzlement, or of falsehood fraud and wilful imposition, or may be convicted of theft, although the circumstances proved may in law amount to robbery.
- (4) The power conferred by this section to convict a person of an offence other than that with which he is charged in an indictment shall be exercisable by the sheriff court before which such person is tried notwithstanding that that other offence was committed outside the jurisdiction of that sheriff court.

[^{F7}60A **Proceedings under the Merchant Shipping Acts.**

In any proceedings under the Merchant Shipping Acts it shall not be necessary to produce the official register of the ship referred to in the proceedings in order to prove the nationality of the ship, but the nationality of the ship as stated in the indictment shall, in the absence of evidence to the contrary, be presumed.]

Textual Amendments

F7 [S. 60A](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), [Sch. 6 Pt. I para. 23](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)

61 **Procedure where more than one crime charged.**

- (1) Where in an indictment two or more crimes or acts of crime are charged cumulatively, it shall be lawful to convict of any one or more of them.
- (2) Any part of what is charged in an indictment, constituting in itself an indictable crime, shall be deemed separable to the effect of making it lawful to convict of such crime.
- (3) Where any crime is charged in an indictment as having been committed with a particular intent or with particular circumstances of aggravation, it shall be lawful to convict of the crime without such intent or aggravation.

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F8 62

Textual Amendments

F8 S. 62 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. 24, Sch. 7 Pt. I; S.I. 1996/517, arts. 3(2), 4-6, Sch. 2

63 Attempt at crime.

- (1) Attempt to commit any indictable crime shall itself be an indictable crime, and under an indictment which charges a completed crime, the accused may be lawfully convicted of an attempt to commit such crime; and under an indictment charging an attempt, the accused may be convicted of such attempt although the evidence be sufficient to prove the completion of the crime said to have been attempted.
- (2) Under an indictment which charges a crime which imports personal injury inflicted by the accused, resulting in death or serious injury to the person, the accused may be lawfully convicted of the assault or other injurious act, and may also be lawfully convicted of the aggravation that such assault or other injurious act was committed with intent to commit such crime.

64 Statutory offences which are offences at common law.

Where any act set forth in an indictment as contrary to any Act of Parliament is also criminal at common law, or where the facts proved under such an indictment do not amount to a contravention of the statute but do amount to a crime at common law, it shall be lawful to convict of the common law crime.

65 Superfluous particulars as to identity.

When in the trial of any indictment the evidence led shall be sufficient to prove the identity of any person, corporation or company, or of any place, or of any thing, it shall not be a valid objection to the sufficiency of such evidence that any particulars set forth in regard thereto in the indictment have not been proved.

66 Proof of exceptions, qualifications, etc.

Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany in the same section the description of the offence in the statute or order creating the offence, may be proved by the accused, but need not be specified or negated in the indictment, and no proof in relation to such exception, exemption, proviso, excuse, or qualification shall be required on behalf of the prosecution.

67 Offence committed in special capacity.

Where an offence is alleged to be committed in any special capacity, as by the holder of a licence, master of a vessel, occupier of a house, or the like, the fact that the accused possesses the qualification necessary to the commission of the offence shall, unless challenged by preliminary objection before his plea is recorded, be held as admitted.

Changes to legislation:

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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\(7\)](#)