



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PART I

SOLEMN PROCEDURE

Jurisdiction

1 Application of Part I of this Act

This Part of this Act shall apply to solemn proceedings in respect of any crime or offence which might, prior to the passing of this Act, or which may under the provisions of this or any Act, whether passed before or after the passing of this Act, be tried on indictment or criminal letters.

2 Jurisdiction and powers of courts of solemn jurisdiction

- (1) The jurisdiction and powers of all courts of solemn jurisdiction, except in so far as the same may be altered or modified by any future Act, shall remain as at the commencement of this Act.
- (2) The sheriff shall, without prejudice to any other or wider power conferred by statute, not be entitled, on the conviction on indictment of an accused person, to pass a sentence of imprisonment for a term exceeding two years.

3 Jurisdiction of sheriff

- (1) Subject to the provisions of this section, the jurisdiction of the sheriffs, within their respective sheriffdoms shall extend to and include all navigable rivers, ports, harbours, creeks, shores and anchoring grounds in or adjoining such sheriffdoms and shall include all criminal maritime causes and proceedings (including such as may apply to persons furth of Scotland) provided the accused shall upon any legal ground of jurisdiction be subject to the jurisdiction of the sheriff before whom such cause or proceeding may be raised.

- (2) It shall not be competent to the sheriff to try any crime committed on the seas which it would not be competent for him to try if the crime had been committed on land.
- (3) Where sheriffdoms are separated by a river, firth or estuary, the sheriffs on either side shall have concurrent jurisdiction over the intervening space occupied by water.

4 Boundaries of jurisdiction

- (1) Where an offence is committed in any harbour, river, arm of the sea or other water (tidal or otherwise) which runs between or forms the boundary of the jurisdiction of two or more courts, such offence may be tried by any one of such courts.
- (2) Where an offence is committed on the boundary of the jurisdiction of two or more courts, or within the distance of 500 yards of any such boundary, or partly within the jurisdiction of one court and partly within the jurisdiction of another court or courts, such offence may be tried by any one of such courts.
- (3) Where an offence is committed on any person or in respect of any property in or upon any carriage, cart or vehicle employed in a journey by road or railway, or on board any vessel employed in a river, lake, canal or inland navigation, such offence may be tried by any court through whose jurisdiction such carriage, cart, vehicle or vessel passed in the course of the journey or voyage during which the offence was committed, and, where the side, bank, centre or other part of the road, railway, river, lake, canal or inland navigation along which the carriage, cart, vehicle or vessel passed in the course of such journey or voyage is the boundary of the jurisdiction of two or more courts, such offence may be tried by any one of such courts.
- (4) Where several offences, which if committed in one sheriff court district could be tried under one indictment, are alleged to have been committed by any person in different sheriff court districts, the accused may be tried for all or any of those offences under one indictment before the sheriff of any one of such sheriff court districts.
- (5) Where an offence is authorised by this section to be tried by any court, it may be dealt with, heard, tried, determined, adjudged and punished as if the offence had been committed wholly within the jurisdiction of such court.

5 Procedure in case of crime in different districts

- (1) Where a person is alleged to have committed in more than one sheriff court district a crime or crimes to which subsection (2) of this section applies, he may be indicted to a court to be held in such one of such sheriff court districts as shall be determined by the Lord Advocate, whether that court is the High Court or the sheriff court.
- (2) This subsection applies to—
 - (a) a crime committed partly in one sheriff court district and partly in another;
 - (b) crimes connected with each other but committed in different sheriff court districts ;
 - (c) crimes committed in different sheriff court districts in succession which, if they had been committed in one such district, could have been tried under one indictment.
- (3) Where, in accordance with the provisions of this section, a case is tried in the sheriff court of any sheriff court district, the procurator fiscal of that district shall have power to prosecute in that case and the sheriff of that district shall have power to try the case

and to pronounce sentence on conviction even if the crime in question has in whole or in part been committed in a different district.

- (4) The sheriff and procurator fiscal referred to in subsection (3) of this section shall have the like powers in relation to the case in question, whether before, during or after the trial, as they respectively have in relation to a case arising out of a crime or crimes committed wholly within their own district.

6 Jurisdiction and procedure in respect of certain indictable offences committed abroad

- (1) Any British subject who in a country outside the United Kingdom does any act or makes any omission which if done or made in Scotland would constitute the crime of murder or of culpable homicide shall be guilty of the same crime and subject to the same punishment as if the act or omission had been done or made in Scotland.
- (2) Any British subject employed in the service of the Crown who, in a foreign country, when acting or purporting to act in the course of his employment, does any act or makes any omission which if done or made in Scotland would constitute an offence punishable on indictment shall be guilty of the same offence, and subject to the same punishment, as if the act or omission had been done or made in Scotland.
- (3) A person may be proceeded against, indicted, tried and punished for an offence under this section in any sheriff court district in Scotland in which he is apprehended or is in custody as if the offence had been committed in that district, and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in that district.

7 Theft outside Scotland

- (1) Any person who has in his possession in Scotland property which he has stolen in any other part of the United Kingdom may be dealt with, indicted, tried and punished in Scotland in like manner as if he had stolen it in Scotland.
- (2) Any person who in Scotland receives property stolen in any other part of the United Kingdom may be dealt with, indicted, tried and punished in Scotland in like manner as if it had been stolen in Scotland.

8 Trial of certain crimes and offences in sheriff court

- (1) Without prejudice to any other power to indict crimes in the sheriff court, it shall be lawful to indict in the sheriff court persons accused of any of the following crimes:—
 - (a) the crime of uttering a forged document;
 - (b) the crime of robbery;
 - (c) the crime of wilful fire-raising ;
 - (d) any of the crimes of going armed by night for the destruction of game.
- (2) Any offence described in any statute as a " misdemeanour " or a " crime and offence " may be tried in the sheriff court either on indictment or summarily.

9 Instructions by Lord Advocate as to reporting offences

The Lord Advocate may from time to time issue instructions to a chief constable with regard to the reporting, for consideration of the question of prosecution, of offences alleged to have been committed within the area of such chief constable, and it shall be the duty of a chief constable to whom any such instruction is issued to secure compliance therewith.

10 Intimation of proceedings in High Court to Lord Advocate

In any proceeding in the High Court (other than a proceeding to which the Lord Advocate or a procurator fiscal is a party) it shall be competent for the court to order intimation of such proceeding to the Lord Advocate.

11 Procedure after intimation Procedure Prior to Trial

On intimation being made to the Lord Advocate of a proceeding in the High Court under section 10 of this Act, the Lord Advocate shall be entitled to appear and be heard in such proceeding.

PROCEDURE PRIOR TO TRIAL

*Arrest, Judicial Examination, Custody, Bail, Etc***12 Petitions for warrants**

Petitions for warrant to arrest and commit persons suspected of or charged with crime may set forth the charge in the forms set out in Schedule A to the Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form; and the provisions of sections 43 to 46 and 48 to 55 of this Act shall apply to any such petition as they apply to the indictment.

13 Warrants for arrest of escaped prisoners and mental patients

- (1) On an application being made to a sheriff or justice alleging that any person is—
 - (a) an offender unlawfully at large from a prison or other institution to which the Prison Act applies in which he is required to be detained after being convicted of an offence; or
 - (b) a convicted mental patient liable to be retaken under section 40 or 140 of the Mental Health Act 1959, section 36 or 106 of the Mental Health (Scotland) Act 1960 or section 30 or 108 of the Mental Health Act (Northern Ireland) 1961 (retaking of mental patients who are absent without leave or have escaped from custody);

the sheriff or justice may issue a warrant to arrest him and bring him before any sheriff.
- (2) Where a person is brought before a sheriff in pursuance of a warrant for his arrest under this section, the sheriff shall, if satisfied that he is the person named in the warrant and if satisfied as to the facts mentioned in paragraph (a) or (b) of the foregoing subsection, order him to be returned to the prison or other institution where he is required or liable to be detained or, in the case of a convicted mental patient, order him to be kept in custody or detained in a place of safety pending his admission to hospital.

(3) Section 139 of the Mental Health Act 1959, section 105 of the Mental Health (Scotland) Act 1960 and section 107 of the Mental Health Act (Northern Ireland) 1961 (custody, conveyance and detention of certain mental patients) shall apply to a convicted mental patient required by this section to be conveyed to any place or to be kept in custody or detained in a place of safety as they apply to a person required by or by virtue of the said Act of 1959, 1960 or 1961, as the case may be, to be so conveyed, kept or detained.

(4) In this section—

" convicted mental patient " means a person liable after being convicted of an offence to be detained under Part V of the Mental Health Act 1959, Part V of the Mental Health (Scotland) Act 1960, Part III of the Mental Health Act (Northern Ireland) 1961 or section 25, 175, 177 or 178 of this Act in pursuance of a hospital order or transfer direction together with an order or direction restricting his discharge ;

" place of safety " has the same meaning as in Part V of the said Act of 1959 or Part III of the said Act of 1961 or section 462 of this Act, as the case may be;

" Prison Act " means the Prison Act 1952, the Prisons (Scotland) Act 1952 or the Prison Act (Northern Ireland) 1953, as the case may be.

14 Warrant to search for or remove a child

(1) If, on an application to a justice by any person who, in the opinion of the justice, is acting in the interests of a child, it appears to the justice on information on oath that there is reasonable cause to suspect—

(a) that the child has been or is being assaulted, ill-treated, or neglected in any place within the jurisdiction of the justice, in a manner likely to cause him unnecessary suffering or injury to health, or

(b) that any offence mentioned in Schedule 1 to this Act has been or is being committed in respect of the child,

the justice may issue a warrant authorising any constable named therein to search for the child and, if it is found that he has been or is being assaulted, ill-treated or neglected in manner aforesaid, or that any such offence as aforesaid has been or is being committed in respect of him, to take him to and detain him in a place of safety, or authorising any constable to remove him with or without search to a place of safety and detain him there.

(2) A child shall not continue to be detained under the last foregoing subsection—

(a) where the reporter considers the child does not require compulsory measures of care, or

(b) after the day on which a children's hearing first sit to consider his case in pursuance of section 37(4) of the Social Work (Scotland) Act 1968, or

(c) for a period exceeding seven days.

(3) A justice issuing a warrant under this section may by the same warrant cause any person accused of any offence in respect of the child to be apprehended and brought before the sheriff, and proceedings to be taken against him according to law.

(4) Any constable authorised by warrant under this section to search for or, with or without search, to remove any child may enter (if need be by force) any house, building, or other place specified in the warrant, and may remove him therefrom.

- (5) Every warrant issued under this section shall be addressed to and executed by a constable, who shall be accompanied by the person making the application if that person so desires, unless the justice by whom the warrant is issued otherwise directs, and may also, if the justice by whom the warrant is issued so directs, be accompanied by a duly qualified medical practitioner.
- (6) It shall not be necessary in any application, information or warrant under this section to name the child.

15 Sheriff's warrant may be executed out of district

- (1) Any warrant granted by a sheriff against—
 - (a) a person charged with having committed a crime or offence within the jurisdiction of that sheriff; or
 - (b) a person as being in *meditatione fugae*,shall be sufficient for the apprehension of that person within any other sheriff court district, and for conveying and disposing of him in terms of the warrant, without the necessity of its being backed or endorsed by any other justice.
- (2) Such warrant may be executed throughout Scotland in like manner as it may be executed within the jurisdiction of the sheriff who granted the warrant.

16 Backing of certain warrants from the Isle of Man

- (1) A warrant issued in the Isle of Man for the arrest of a person charged with an offence may, after it has been endorsed by a justice in Scotland, be executed there by the person bringing that warrant, by any person to whom the warrant was originally directed or by any officer of law of the sheriff court district where the warrant has been endorsed as aforesaid in like manner as any such warrant issued in Scotland.
- (2) In this section " endorsed " means endorsed in the like manner as a process to which section 4 of the Summary Jurisdiction (Process) Act 1881 applies.

17 Execution of Scottish warrants in England and vice versa

- (1) A warrant issued in Scotland for the apprehension of a person charged with an offence may be executed in England by any constable acting within his police area; and subsections (3) and (4) of section 102 of the Magistrates' Courts Act 1952 (execution on Sunday and execution without possession of the warrant) shall apply to the execution in England of any such warrant.
- (2) A warrant issued in England for the arrest of a person charged with an offence may be executed in Scotland by any constable appointed for a police area in like manner as any such warrant issued in Scotland.
- (3) A warrant may be executed by virtue of this section whether or not it has been endorsed under section 14 or 15 of the Indictable Offences Act 1848.
- (4) Nothing in this section affects the execution in Scotland of a warrant to which section 123 of the Bankruptcy Act 1914 applies.

18 Power of constable to take offenders into custody

- (1) Without prejudice to any other powers of arrest, any constable may take into custody, without warrant—
 - (a) any person who within his view commits any of the offences mentioned in Schedule 1 to this Act, if the constable does not know and cannot ascertain his name and address;
 - (b) any person who has committed, or whom he has reason to believe to have committed, any of the offences mentioned in Schedule 1 to this Act, if the constable does not know and cannot ascertain his name and address or has reasonable ground for believing that he will abscond.
- (2) Where, under the powers conferred by this section, a constable arrests any person without warrant, the superintendent or inspector of police or an officer of police of equal or superior rank, or the officer in charge of the police station to which the person is brought, shall, unless in his belief the release of the person would tend to defeat the ends of justice, or to cause injury or danger to the child (being a person under the age of 17 years) against whom the offence is alleged to have been committed, release the person arrested on his entering into an obligation to attend at the hearing of the charge or on his finding bail for such amount as may in the judgment of the officer of police be required to secure his attendance.

19 Prisoners before examination to have access to solicitor

- (1) Where any person has been arrested on any criminal charge, such person shall be entitled immediately upon such arrest to have intimation sent to a solicitor that his professional assistance is required by such person, and informing him of the place to which such person is to be taken for examination.
- (2) Such solicitor shall be entitled to have a private interview with the person accused before he is examined on declaration, and to be present at such examination.
- (3) It shall be in the power of the sheriff or justice to delay such examination for a period not exceeding 48 hours from and after the time of such person's arrest, in order to allow time for the attendance of such solicitor.

20 Accused at examination need not emit a declaration

- (1) Where the accused is brought before the sheriff for examination on any charge and he or his solicitor intimates that he does not desire to emit a declaration in regard to such charge, it shall be unnecessary to take a declaration, and the accused may be committed for further examination or until liberated in due course of law without a declaration being taken.
- (2) Where the accused does not desire to emit a declaration as aforesaid, that fact shall be recorded in the warrant of committal.
- (3) The foregoing provisions of this section shall not prejudice the right of the accused subsequently to emit a declaration on intimating to the prosecutor his desire to do so.
- (4) The provisions of this section shall apply to procedure under indictment, without prejudice to the accused being tried summarily by the sheriff for any offence in respect of which he has been committed until liberated in due course of law.

21 Examination of accused on charges arising in different districts

Where there are charges against the accused in different sheriff court districts he may be brought before the sheriff of any one of such districts at the instance of the procurator fiscal of such district for examination on all or any of such charges, and may be dealt with in every respect as if such charges had arisen in the district where he is examined, but without prejudice to the power of the Lord Advocate under section 5 of this Act to determine the court before which the accused shall be tried on such charges.

22 Committal until liberation in due course of law

- (1) All informations shall be signed and no person shall be committed until liberated in due course of law for any crime or offence without a warrant in writing expressing the particular charge in respect of which he is committed.
- (2) Any such warrant for imprisonment which either proceeds on an unsigned information or does not express the particular charge shall be null and void.
- (3) The accused person shall immediately be given a true copy of the warrant for imprisonment signed by the messenger or executor of the warrant before imprisonment or the warder of the prison receiving the warrant.

23 Remand and committal of persons under 21

- (1) Where a court remands or commits for trial or for sentence a person under 21 years of age who is charged with or convicted of an offence and is not released on bail, then, except as otherwise expressly provided by this section, the following provisions shall have effect, that is to say—
 - (a) subject to the following paragraph, if he is under 16 years of age the court shall commit him to the local authority in whose area the court is situated, and the authority shall have the duty of placing him in a suitable place of safety chosen by the authority instead of committing him to prison ;
 - (b) if he is a person of over 16 years of age, or a child under 16 years of age but over 14 years of age who is certified by the court to be unruly or depraved, and the court has been notified by the Secretary of State that a remand centre is available for the reception from that court of persons of his class or description, he shall be committed to a remand centre instead of being committed to prison.
- (2) Where any person is committed to a local authority or to a remand centre under any provision of this Act, that authority or centre shall be specified in the warrant, and he shall be detained by the authority or in the centre for the period for which he is committed or until he is liberated in due course of law.
- (3) Where any person has been committed to a local authority under any provision of this Act, the court by which he was committed, if the person so committed is not less than 14 years of age and it appears to the court that he is unruly or depraved, may revoke the commitment and commit the said person—
 - (a) if the court has been notified that a remand centre is available for the reception from that court of persons of his class or description, to a remand centre; and
 - (b) if the court has not been so notified, to a prison.
- (4) Where, in the case of a person under 16 years of age who has been committed to prison or to a remand centre under this section, the sheriff is satisfied that his detention in

prison or a remand centre is no longer necessary, he may revoke the commitment and commit the person to the local authority in whose area the court is situated, and the authority shall have the duty of placing him in a suitable place of safety.

24 Committal of children to custody in place of safety

- (1) Any court, on remanding or committing for trial a child who is not liberated on bail shall, instead of committing him to prison, commit him to the local authority in whose area the court is situated to be detained in a place of safety chosen by the local authority for the period for which he is remanded or until he is liberated in due course of law.

Provided that in the case of a child over 14 years of age it shall not be obligatory on the court so to commit him if the court certifies that he is of so unruly a character that he cannot safely be so committed or that he is of so depraved a character that he is not a fit person to be so detained.

- (2) A commitment under this section may be varied, or, in the case of a child over 14 years of age, who proves to be of so unruly a character that he cannot safely be detained in such custody, or to be of so depraved a character that he is not a fit person to be so detained, revoked, by the court which made the order, or if application cannot conveniently be made to that court, by a sheriff sitting summarily having jurisdiction in the place where the court which made the order sat, and if it is revoked the child may be committed to prison.

25 Power of court to commit to hospital a person suffering from mental disorder

- (1) Where a court remands or commits for trial a person charged with any offence who appears to the court to be suffering from mental disorder, and the court is satisfied that a hospital is available for his admission and suitable for his detention, the court may, instead of remanding him in custody, commit him to that hospital.
- (2) Where any person is committed to a hospital as aforesaid, the hospital shall be specified in the warrant and, if the responsible medical officer is satisfied that he is suffering from mental disorder of a nature or degree which warrants his admission to a hospital under Part IV of the Mental Health (Scotland) Act 1960, he shall there be detained for the period for which he is remanded or the period of committal, unless before the expiration of that period he is liberated in due course of law.
- (3) When the responsible medical officer has examined the person so detained he shall report the result of that examination to the court and, where the report is to the effect that the person is not suffering from mental disorder of such a nature or degree as aforesaid, the court may commit him to any prison or other institution to which he might have been committed had he not been committed to hospital or may otherwise deal with him according to law.
- (4) No person shall be committed to a hospital under this section except on the written or oral evidence of a medical practitioner.

26 Bail competent before committal

- (1) All crimes and offences, except murder and treason, shall be bail able.
- (2) Any person accused of a crime which is by law bail able shall be entitled immediately after he has been brought before a justice for examination on declaration to apply to

such justice or to the sheriff for liberation on his finding caution in common form to appear at any diet to which he may be cited for further examination, or in order to answer any indictment or complaint which may be served upon him:

Provided that the prosecutor shall be entitled to be heard against any such application.

- (3) The sheriff or justice shall be entitled in his discretion to refuse such application before the person accused is committed until liberated in due course of law.
- (4) Where an accused person is admitted to bail without being committed until liberated in due course of law, it shall not be necessary so to commit him, and it shall be lawful to serve him with an indictment or complaint without his having been previously so committed.

27 Renewal of application for bail after committal

Where bail is refused before committal until liberation in due course of law on an application made under the last foregoing section, the application for bail may be renewed after such committal.

28 Admission or refusal of bail after committal

- (1) Any sheriff having jurisdiction to try the offence or to commit the accused until liberated in due course of law may, at his discretion, on the application of any person who has been committed until liberation in due course of law for any crime or offence, except murder or treason, and after opportunity shall have been given to the prosecutor to be heard thereon, admit or refuse to admit such person to bail.
- (2) Such application shall be disposed of within 24 hours after its presentation to the sheriff, failing which the accused shall be forthwith liberated.

29 Amount of bail

Any sheriff admitting a person to bail shall fix the bail at such an amount as he may consider sufficient to ensure the appearance of such person to answer at all diets to which he may be cited on the charge.

30 Application for review of court's decision on bail and caution

- (1) The following provisions of this section shall apply where a court has refused to admit a person to bail or, where a court has so admitted a person, the bail fixed in his case has not been found.
- (2) A court shall, on the application of any such person as aforesaid, have power to review its decision to admit to bail or its decision as to the bail fixed and may, on cause shown, admit the person to bail or, as the case may be, fix bail at a lower amount.
- (3) An application under this section, where it relates to the original decision of the court, shall not be made before the fifth day after that decision and, where it relates to a subsequent decision, before the fifteenth day thereafter.
- (4) Nothing in the provisions of this section shall affect any right of a person to appeal against the decision of a court in relation to admitting to bail or to the bail fixed.

- (5) In the foregoing provisions of this section, any reference to bail includes a reference to caution for interim liberation and any reference to admitting to bail shall include a reference to ordering the finding of caution as aforesaid.

31 Appeal in respect of bail

- (1) Where an application for bail after commitment until liberation in due course of law is refused by any sheriff, or where the applicant is dissatisfied with the amount of bail fixed, he may appeal to the High Court, and the High Court may, in its discretion, order intimation to the Lord Advocate.
- (2) Where an application for bail is granted by any sheriff, whether before or after commitment until liberation in due course of law, the public prosecutor, if dissatisfied with the decision allowing bail, or with the amount of bail fixed, may appeal to the High Court, and the applicant shall not be liberated until the appeal by the prosecutor is disposed of, except as provided in section 33 of this Act.
- (3) Written notice of appeal shall be immediately given to the opposite party by the party appealing under this section.
- (4) An appeal under this section shall be disposed of by the High Court or any Lord Commissioner of Justiciary in court or in chambers after such inquiry and hearing of parties as shall seem just.
- (5) In the event of the appeal of the public prosecutor under this section being refused, the court may award expenses against him.

32 No fees exigible against accused in respect of application for bail

No clerks' fees, court fees, or other fees or expenses shall be exigible from, or be awarded against, an accused in respect of his application for bail, or of the appeal of such application to the High Court.

33 Liberation of applicant when appeal by public prosecutor

- (1) When an appeal is taken by the public prosecutor either against the grant of bail or against the amount fixed, the applicant to whom bail has been granted shall, if the bail fixed shall have been found by him, be liberated after 72 hours, or where the place of application is in the Outer Hebrides, or in Orkney or Zetland, 96 hours from the granting of the application, whether the appeal be disposed of or not, unless the High Court shall grant an order for his further detention in custody. In computing the aforesaid periods, Sundays and public holidays, whether general or court holidays, shall be excluded.
- (2) Notice by telegraph to the governor of the prison of the issue of such an order within the time aforesaid bearing to be sent by the Clerk of Justiciary or the Crown Agent shall be sufficient warrant for the detention of the applicant pending arrival of the order in due course of post.

34 Power of court to refund bail

Where any court has made an order for the forfeiture of bail it shall be competent for the court, if it is satisfied that it is reasonable in all the circumstances to do so, to recall

the order and direct that the bail money forfeited shall be refunded. Any decision of a court under this section shall be final and not subject to review.

35 Right of Lord Advocate and High Court to admit a person to bail

Nothing contained in this Act shall affect the right of the Lord Advocate or the High Court to admit to bail any person charged with any crime or offence.

36 Citation of persons liberated on bail at domiciles specified in bail bonds

All bail bonds whatsoever received in order to obtain the liberation of accused persons from custody shall specify the domicile at which such persons may thereafter be cited for trial before any criminal court.

37 Power to order parent to give security for child's good behaviour

- (1) Where a child has been charged with any offence, the court may order his parent or guardian to give security for his co-operation in securing the child's good behaviour.
- (2) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.
- (3) Any sums ordered on forfeiture of any such security as aforesaid to be paid by a parent or guardian may be recovered from him by civil diligence or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child was charged.

38 Separation of children from adults at courts, etc.

Arrangements shall be made for preventing a child while detained in a police station, or while being conveyed to or from any criminal court, or while waiting before or after attendance in any criminal court, from associating with an adult (not being a relative) who is charged with any offence other than an offence with which the child is jointly charged, and for ensuring that a female child shall, while so detained, being conveyed, or waiting, be under the care of a woman.

39 Attendance at court of parent of child charged with an offence, etc.

- (1) Where a child is charged with any offence, his parent or guardian may in any case, and shall, if he can be found and resides within a reasonable distance, be required to attend at the court before which the case is heard or determined during all the stages of the proceedings, unless the court is satisfied that it would be unreasonable to require his attendance.
- (2) Where the child is arrested, the constable by whom he is arrested or the officer of police in charge of the police station to which he is brought shall cause the parent or guardian of the child, if he can be found, to be warned to attend at the court before which the child will appear.
- (3) For the purpose of enforcing the attendance of a parent or guardian and enabling him to take part in the proceedings and enabling orders to be made against him, rules may be made under section 457 of this Act, for applying, with the necessary adaptations

and modifications, such of the provisions of Part II of this Act as appear appropriate for the purpose.

- (4) The parent or guardian whose attendance shall be required under this section shall be the parent or guardian having the actual possession and control of the child:

Provided that, if that person is not the father, the attendance of the father may also be required.

- (5) The attendance of the parent of a child shall not be required under this section in any case where the child was before the institution of the proceedings removed from the custody or charge of his parent by an order of a court.

40 Notice to local authority of charge against a child

- (1) Where a child is to be brought before a court, notification of the day and hour when, and the nature of the charge on which, the child is to be so brought shall be sent by the chief constable of the area in which the offence is alleged to have been committed to the local authority for the area in which the court will sit.
- (2) Where a local authority have received a notification under the foregoing subsection they shall make such investigations and render to the court a report which shall contain such information as to the home surroundings of the child as appear to them will assist the court in the disposal of his case, and the report shall contain information, which the appropriate education authority shall have a duty to supply, as to the school record, health and character of the child.

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 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 deputies, 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.

42 Procedure on resignation, death or removal of Lord Advocate

All indictments which have been raised by any Lord Advocate shall continue in force and effect notwithstanding his resignation, and may be taken up and proceeded with by his successor; and where any Lord Advocate shall die during his tenure of office, or otherwise be removed from office, it shall be lawful to indict persons accused in name of the Solicitor General then in office until another Lord Advocate is appointed, and the advocates depute and procurators fiscal shall have power, notwithstanding such death or removal from office of the Lord Advocate, to take up and proceed with any indictments already raised in name of such Lord Advocate, and any indictments that may be raised in name of such Solicitor General.

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.

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.

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.
- (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.

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.

54 " Money" to include coin, bank notes and post office orders

The word " money " when used in an indictment shall include all current coin of the realm, post office orders and postal orders and bank or banker's notes, and it shall not be necessary to specify in any statement in an indictment relating to a sum of money whether such sum consisted of gold, silver or other coin, post office orders or postal orders, or bank or banker's notes, or any of them, but it shall be sufficient to state the sum as consisting of money.

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 or on any execution of citation or notice of other document requiring to be served shall be sufficiently authenticated by the initials of the person serving the same.

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, 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.

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.

62 Mode of charging certain offences committed against two or more children under 17

- (1) Where a person is charged with committing any of the offences mentioned in Schedule 1 to this Act in respect of two or more children under the age of 17 years, the same indictment may charge the offence in respect of all or any of them.
- (2) The same indictment may also charge any person as having the custody, charge, or care, alternatively or together, and may charge him with the offences of assault, ill-treatment, neglect, abandonment, or exposure, together or separately, and may charge him with committing all or any of those offences in a manner likely to cause unnecessary suffering or injury to health, alternatively or together.
- (3) When any offence mentioned in Schedule 1 to this Act charged against any person is a continuous offence, it shall not be necessary to specify in the indictment the date of the acts constituting the offence.

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 negatived 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.

Notice of previous convictions

68 Notice of previous convictions

- (1) No mention shall be made in the indictment of previous convictions, nor shall extracts of previous convictions be included in the list of productions annexed to the indictment.
- (2) If the prosecutor desires to place before the court any previous conviction, he shall cause to be served on the accused along with the indictment a notice in the form of Form No. 1 of Schedule 7 to the Criminal Justice (Scotland) Act 1949 or in the form set out in an Act of Adjournal under this Act or as nearly as may be in such form, and any conviction set forth in that notice shall be held to apply to the accused unless he gives, in accordance with subsection (3) of this section, written intimation objecting to such conviction on the ground that it does not apply to him or is otherwise inadmissible.

- (3) Where the accused pleads not guilty at the first diet, intimation objecting to a conviction under subsection (2) of this section shall be given, at least five clear days before the second diet, to the Crown Agent, where the accused is cited to the High Court for the second diet, or to the procurator fiscal of the district to the court of which the accused is cited for the second diet where the case is to be tried in the sheriff court; and where the accused pleads guilty at the first diet, no objection to any such conviction shall be entertained unless the accused has, at least two clear days before that diet, given intimation to the procurator fiscal of the district to the court of which the accused is cited for that diet.
- (4) Where notice is given by the accused under section 102 of this Act of his intention to plead guilty and the prosecutor desires to place before the court any previous conviction, he shall cause to be served on the accused along with the indictment a notice in the form of Form No. 1 of Schedule 7 to the Criminal Justice (Scotland) Act 1949 or in the form set out in an Act of Adjournal under this Act or as nearly as may be in such form, and any conviction set forth in that notice shall be held to apply to the accused unless within two days after service of the notice he gives to the procurator fiscal written intimation objecting to such conviction on the ground that it does not apply to him or is otherwise inadmissible.

Citation of Accused, Witnesses and Jurors

69 Warrants for citation

When any sitting of the sheriff court or of the High Court has been appointed to be held for the trial of persons accused on indictment, the sheriff clerk of the district in which the second diet is to be called, where such trials are to take place in the sheriff court, or the Clerk of Justiciary, where such trials are to take place in the High Court, shall issue a warrant to officers of law to cite persons accused, witnesses, and jurors, conform to Schedule B to the Criminal Procedure (Scotland) Act 1887 ; and the execution of the citation against such accused persons shall be conform to Schedule C to that Act; and the execution of the citation of witnesses shall be conform to Schedule D to that Act; and the execution of the citation of jurors shall be conform to Schedule E to that Act; and such warrant authenticated by the signature of such clerk, or a duly certified copy thereof, shall be a sufficient warrant to all officers competent.

The warrant and the executions mentioned in this section may, instead of being conform to the said Schedules B to E, be in the form set out in an Act of Adjournal under this Act or as nearly as may be in such form.

70 Service of indictment and list of witnesses

The accused shall be served with a full copy of the indictment and of the list of the names and addresses of the witnesses to be adduced by the prosecution.

71 Manner of service of indictment, etc.

Service of indictment, list of witnesses and list of productions appended thereto, and all notices or intimations to the accused, and all citations of witnesses, whether for precognition or trial, may be made or given by any macer, messenger at arms, sheriff officer, or officer of police at any place, and where the accused is in prison at the time

of service on him, such service shall be made by any governor, deputy governor, or warder of the prison.

72 Officers may cite jurors and witnesses, without witnesses and oath of officer sufficient evidence of citation

It shall be sufficient for the citation of any juror or witness that such citation be given by any officer of law duly authorised, without witnesses; and the oath of such officer in support of the execution shall be held and received as sufficient evidence of such citation when the same shall be questioned in a court of law.

73 Execution of citation of indictment

- (1) It shall be no objection to the service of an indictment, or to the citation of any juror or witness, that the officer who discharged the duty was not at the time in possession of the warrant of citation ; and it shall not be necessary to produce the execution of citation of any indictment, unless sentence of forfeiture of a bond of caution granted for appearance to stand trial shall be moved for, but without prejudice to such execution being exhibited to disprove objections to service when stated to the court.
- (2) It shall be no objection to the admissibility of the officer or witness who served such indictment to give evidence respecting such service that his name is not included in the list of witnesses served on the accused.

74 Proceedings against bodies corporate

- (1) In any proceedings against a body corporate, the indictment may be served by delivery of a copy of the indictment with notice to appear attached thereto at the registered office or, if there is no registered office or the registered office is not in the United Kingdom, at the principal place of business in the United Kingdom of the body corporate.

Where a letter containing a copy of the indictment has been sent by registered post or by the recorded delivery service to the registered office or principal place of business of the body corporate, an acknowledgment or certificate of the delivery of the letter issued by the Post Office shall be sufficient evidence of the delivery of the letter at the registered office or place of business on the day specified in such acknowledgment or certificate.

- (2) In any such proceedings as aforesaid the body corporate may, for the purpose of—
 - (a) stating objections to the competency or relevancy of the indictment or proceedings ; or
 - (b) tendering a plea of guilty or not guilty; or
 - (c) making a statement in mitigation of sentence ;appear by a representative of the body corporate.
- (3) Where at the first diet in any such proceedings as aforesaid the body corporate does not appear or tender any plea in accordance with the provisions of the last foregoing subsection, or by counsel or a solicitor, it shall be deemed to have tendered a plea of not guilty.
- (4) Where at the second diet in any such proceedings as aforesaid the body corporate does not appear in accordance with the provisions of subsection (2) of this section, or by

counsel or a solicitor, the court shall, on the motion of the prosecutor, if it is satisfied that the provisions of subsection (1) of this section have been complied with, proceed to hear and dispose of the case in the absence of the body corporate.

- (5) Where in any such proceedings as aforesaid a body corporate is sentenced to a fine, the fine may be recovered in like manner in all respects as if a copy of the sentence certified by the clerk of the court were an extract decree of the Court of Session for the payment of the amount of the fine by the body corporate to the Queen's and Lord Treasurer's Remembrancer.
- (6) Nothing contained in section 103 or 105 of this Act shall require a plea tendered by or on behalf of a company to be signed.
- (7) If on the application of the procurator fiscal, a sheriff is satisfied that there is reasonable ground for suspecting that an offence has been or is being committed by a body corporate, the sheriff shall have the like power to grant warrant for the citation of witnesses and the production of documents and articles as he would have if a petition charging an individual with the commission of the offence were presented to him.
- (8) In this section, the expression " representative ", in relation to a body corporate against which such proceedings as aforesaid are brought, means an officer or servant of the body corporate duly appointed by it for the purpose of those proceedings. Such appointment need not be under the seal of the body corporate, and a statement in writing purporting to be signed by the managing director of, or by any person having or being one of the persons having the management of the affairs of the body corporate, to the effect that the person named in the statement has been appointed the representative of the body corporate for the purpose of the said proceedings shall be admissible without further proof as evidence that the person has been appointed.

Fixing the Diets

75 Two diets

The notice to a person accused when served with an indictment to appear and answer thereto shall contain two diets of appearance in the form of Schedule F to the Criminal Procedure (Scotland) Act 1887 where the second diet is to be in the sheriff court, and in the form of Schedule G to that Act when the second diet is to be in the High Court, and such first diet shall be not less than six clear days after the service of the indictment, and such second diet shall not be less than nine clear days after such first diet.

The said notice may, instead of being in the form of the said Schedule F or G, be in the form set out in an Act of Adjournal under this Act or as nearly as may be in such form.

76 Notice for first diet

- (1) Where a person is charged on indictment, the notice for the first diet of appearance shall call on that person to appear in the sheriff court before which he appeared on judicial examination unless the Lord Advocate otherwise directs.
- (2) The Lord Advocate may make a direction that the first diet of appearance may be taken at a sheriff court other than the sheriff court where the accused appeared on judicial examination either in respect of a class of cases or in respect of particular cases.

77 Alteration of diet

Where in any proceedings on indictment the second diet in which is to be in the sheriff court the indictment is not brought to trial at that diet and a warrant has been issued by the sheriff clerk under section 69 of this Act for a subsequent sitting of the court on a day within one month after the date of the aforesaid second diet, it shall be lawful for the court to adjourn that diet to the subsequent sitting, and the warrant shall have effect as if the second diet had been originally fixed for the date of such subsequent sitting.

*Lodging of List of Witnesses, Productions, Special Defence, Etc***78 Record copy indictment and list of witnesses**

The record copy of the indictment shall on or before the date of service of the indictment be lodged with the sheriff clerk of the district in which the court of the first diet is situated, and a copy of the list of witnesses and a copy of the list of productions shall be lodged with the sheriff clerk of the district in which the court of the second diet is situated.

79 Description of witnesses

- (1) The list of witnesses shall consist of the names of the witnesses, with their addresses added, and it shall not be necessary to insert the words " now or lately residing at, " or any similar words, and it shall not be an objection to the admissibility of any witness that he has ceased to reside at the address given before the date of the trial, provided that he resided at such address at some time, not being more than six months previous to the date of the trial.
- (2) It shall not be necessary to insert in the list of witnesses the names of any witnesses to the declaration of the accused or the names of any witnesses to prove that an extract conviction applies to the accused, but witnesses may be examined in regard to these matters without previous notice.

80 Objection to witnesses

Any objection in respect of misnomer or misdescription of any person named in the indictment, or of any witness in the list of witnesses, must be stated before a jury has been sworn to try the case, and no such objection shall be admitted as ground for postponing any trial or for excluding any witness, unless the accused shall, at least four clear days before the second diet, give notice to the procurator fiscal of the district of the second diet where notice of trial is given for the sheriff court, or to the Crown Agent where notice of trial is given for the High Court, of his inability to discover who such person named in the indictment is, or to find such witness, and shall show that notwithstanding such intimation to the prosecutor he has not been furnished with such additional information as might enable him to ascertain who such person is, or to find such witness in sufficient time to recognise him before the trial, and where either of these things shall be shown the court shall give such remedy by postponement, adjournment, or otherwise, as shall seem just.

81 Examination by prosecutor of witnesses, etc., not included in lists lodged

In any trial it shall be competent with the leave of the court for the prosecutor to examine any witness or to put in evidence any production not included in the lists lodged by him, provided that written notice containing, in the case of a witness, his name and address shall have been given to the accused not less than two clear days before the day on which the jury is sworn to try the case.

82 Written notice of special defence and examination of witnesses and productions not included in lists lodged

- (1) It shall not be competent for the accused to state any special defence unless a plea of special defence shall be tendered and recorded at the first diet, or unless cause be shown to the satisfaction of the court for a special defence not having been lodged till a later day, which must in any case not be less than two clear days before the second diet.
- (2) It shall not be competent for the accused to examine any witnesses or to put in evidence any productions not included in the lists lodged by the prosecutor, unless written notice of the names and addresses of such witnesses and of such productions shall have been given to the procurator fiscal of the district of the second diet when the case is to be tried in the sheriff court, or to the Crown Agent where the case is to be tried in the High Court, at least three clear days before the day on which the jury is sworn to try the case, or unless the accused shall show before a jury is sworn to try the case that he was unable to give the full notice of three days in regard to any witnesses he may desire to examine or productions he may desire to lodge, and where this is shown the court shall give such remedy to the prosecutor by adjournment or postponement of the trial or otherwise as shall seem just.
- (3) A copy of every written notice required by the last foregoing subsection shall be lodged by the accused with the sheriff clerk of the district in which the second diet is to be held, or in any case the second diet of which is to be held in the High Court in Edinburgh with the Clerk of Justiciary, at or before the second diet, for the use of the court.

83 Accused entitled to see productions

The accused shall be entitled to see the productions according to the existing law and practice in the office of the sheriff clerk of the district in which the court of the second diet is situated or, where the second diet is to be in the High Court in Edinburgh, in the Justiciary Office.

84 Proof as to productions

Where a person who has examined a production is adduced to give evidence with regard thereto and the production has been lodged at least eight days before the second diet, it shall not be necessary to prove that the production was received by him in the condition in which it was taken possession of by the procurator fiscal or the police and returned by him after his examination of it to the procurator fiscal or the police unless the accused, at least four days before the second diet, gives to the Crown Agent, where he is cited to the High Court for the second diet, or to the procurator fiscal of the district to the court of which he is cited for the second diet, where the case is to be tried in the sheriff court, written notice that he does not admit that the production was received or returned as aforesaid.

Preparation of Jury List, etc.

85 Forty-five jurors to be returned for trials

- (1) For the purpose of a trial, the number of jurors required to be returned by the sheriff principal to the court shall be 45, unless otherwise directed.
- (2) The Lord Justice Clerk or any Lord Commissioner of Justiciary may direct more than 45 persons to be summoned as jurors to serve in any trial in the High Court.

86 Jurors for High Court at Edinburgh

The High Court may by Act of Adjournal specify the areas from which and the proportions in which jurors are to be summoned for trials in that court to be held in Edinburgh, and for any such trial the sheriff principal of the sheriffdom in which the trial is to take place shall requisition the required number of jurors from the areas and in the proportions so specified.

87 Jurors for High Court when on circuit

Where the High Court is to be on circuit, the sheriff principal of the sheriffdom in which a trial is to be held shall requisition from the sheriff court districts in which the circuit is to take place the required number of jurors for that trial in such proportions as may be specified in an Act of Adjournal under this Act.

88 Area from which jury summoned to circuit court

When the High Court shall exercise its power of holding a court in any town which may be most convenient for the trial of any crime in or near the locality in which such crime has been committed, and where such town is not one of the towns in which the High Court usually sits, the jury summoned to try such case shall be summoned from the general jury roll of the sheriff court district in which such town is situated.

89 Jurors in inferior courts

For the purpose of a trial in any inferior court the clerk of court shall be furnished with a list of names from the jury book of the sheriff court district in which the court is held, containing the number of persons required.

90 Order in which names of jurors are to be taken

The sheriffs principal, in any return of jurors made by them to a court, shall take the names in regular order, beginning at the top of the lists in the said jury books, in each of the sheriff court districts, as required ; and as often as any juror shall be returned to them, they shall mark or cause to be marked, in the said general jury book of their respective sheriff court districts the date when any such juror shall have been returned to serve; and in any such return they shall commence with the name immediately after the last in the preceding return, without regard to the court to which the return was last made, and taking the subsequent names in the order in which they shall have been entered, as herein directed, and so to the end of the lists respectively.

91 Names of jurors dying or becoming disqualified to be passed over in making returns of jurors

Where a person whose name has been entered in the said general jury book dies, or becomes disqualified as a juror, whether from loss of property, absence, or other legal cause, the sheriff principal, in making returns of jurors in accordance with the provisions of this Act, shall pass over the name of that person, but the date at which his name shall have been so passed over, and the reason therefor, shall be entered at the time in the said general jury book.

92 Jurors as returned to serve on trials

The lists returned in accordance with the provisions of this Act by the sheriffs principal to the clerks of court, and none other, shall be used for the several trials for which the same shall have been required.

93 Names of jurors to be inserted in one roll

The persons to serve upon assizes in the High Court shall be listed and their names and designations shall be inserted in one roll to be signed by the judge.

94 One list of assize sufficient for all trials at the same diet in High Court

When in the High Court more than one case shall be set down for trial at one and the same diet, it shall not be necessary to prepare more than one list of assize, and such list shall be authenticated by the signature of a judge of the said court, and shall be the list of assize for the trial of all parties cited to that particular diet; and the persons included in such list shall be summoned to serve generally upon the assize of all the accused cited to such diet, and one general execution of citation only shall be returned against them; and a copy of such list, certified by one of the clerks of court, shall have the like effect, for all purposes for which such list may be required, as the principal list of assize authenticated as aforesaid.

95 No irregularity in lists, etc., to be an objection to jurors

No irregularity in making up the lists in accordance with the provisions of this Act, or in transmitting the same, or in the warrant of citation, or in summoning jurors, or in returning any execution of citation, shall constitute an objection to jurors whose names shall be included in the jury list, reserving always to the court to judge of the effect of an objection founded on any felonious act by which jurors may be returned to serve in any case contrary to the provisions of this Act or the Jurors (Scotland) Act 1825.

96 Notice of jury list

- (1) It shall not be necessary to serve any list of jurors upon the accused, but on and after the date of the service of an indictment a list of jurors, prepared under the directions of the Clerk of Justiciary where the second diet is to be held in the High Court, and prepared by the sheriff clerk of the district in which the second diet for the trial of such person is to be held, where the second diet is to be held in the sheriff court shall be kept in the office of the sheriff clerk of the district in which the court of the second diet is situated, and the accused shall be entitled to have a copy supplied to him on application free of charge.

- (2) Such list shall contain not less than 30 names, and shall be headed " List of Assize for the Sitting of the High Court of Justiciary (or, the Sheriff Court of _____ at _____) on the _____ of _____ 19____ ."

97 Sufficient jurors only to be summoned

It shall not be necessary to summon all the jurors contained in any list of jurors under this Part of this Act, but it shall be competent to summon such jurors only, commencing from the top of the list as may be necessary to ensure a sufficient number for the trial of the cases which shall remain for trial at the date of the citation of the jurors, and such number shall be fixed by the clerk of the court in which the second diet is to be called, or in any case in the High Court by the Clerk of Justiciary, and where jurors are not summoned, from the whole jurors in any list not being required, such jurors shall be placed upon the next list issued, until they have attended to serve.

98 Jurors to be cited by registered letter or recorded delivery

The sheriff clerk of the sheriffdom in which a sitting of the High Court is to be held, or his depute, or the sheriff clerk of the sheriff court district in which any juror is to be cited, or his depute, where the citation is for a trial before a sheriff, shall fill up and sign a proper citation addressed to each such juror, and shall cause the same to be transmitted to him by letter, sent to him at his place of residence as stated in the roll of jurors by registered post or recorded delivery; and a certificate under the hand of such sheriff clerk, or his depute, of the citation of any jurors or juror in manner herein provided, shall be deemed a legal citation:

Provided that the sheriff clerk of the sheriffdom in which a sitting of the High Court is to be held shall issue citations to the whole jurors required for said sitting, whether said jurors reside in that or in any other sheriffdom.

99 Fining of jurors for non-attendance

- (1) Persons cited to attend as jurors may be fined if they fail to attend.
- (2) A fine imposed under this section at a sitting of the High Court may, on application, be remitted in accordance with the provisions of Schedule 2 to this Act.

100 No exemptions by sex or marriage from liability to serve as juror

- (1) A person shall not be exempted by sex or marriage from the liability to serve as a juror but any judge may, in his discretion, on an application made by or on behalf of the prosecution or the accused or at his own instance, make an order that the jury shall be composed of men only or of women only, as the case may require, or may, on an application made by a woman to be exempted from service on a jury in respect of any case by reason of the nature of the evidence to be given or of the issues to be tried, grant such exemption.
- (2) Rules of court may be made by Act of Adjournal—
- (a) prescribing the manner in which jurors are to be summoned and to be selected from the panel;
 - (b) exempting from attendance as jurors any women who are for medical reasons unfit to attend;

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

- (c) as to the procedure to be adopted on any application under this section relating to service on juries;
 - (d) requiring or authorising an application under this section, or any order thereon, to be made in interlocutory proceedings. The rules of court in relation to the matters referred to in this subsection which are in force at the commencement of this Act are set out in Schedule 3 to this Act.
- (3) Any enactment relating to juries which is in force at the commencement of this Act shall have effect subject to the provisions of this section.

Delay in trial

101 Prevention of delay in trials

- (1) Any prisoner who is in prison on a commitment until liberated in due course of law, and who shall not be served with an indictment within 60 days of such commitment, shall be entitled to give notice to the Lord Advocate through the Crown Agent that, if he is not served with an indictment within 14 days of such notice, the prosecutor will be called on to show cause before the High Court why such accused person should not be released from prison and, upon a note being presented to that court setting forth that such notice has been given and that no indictment has been served within that period of 14 days, the court shall ordain the prosecutor forthwith to show cause as aforesaid and, where cause is not shown to the satisfaction of the court, the court shall grant warrant ordering such person to be released at the expiry of three days from the issuing of such order, unless within said three days an indictment be served upon him.
- (2) Where any accused person is liberated as aforesaid, it shall be competent for the prosecutor to raise an indictment against him, and to obtain from a judge of the jurisdiction to which he is cited for the second diet, or a judge of the High Court, a warrant authorising his apprehension and recommitment to prison to await his trial on such indictment, and in the event of the trial on such indictment not taking place at the second diet thereof, or any other day to which it may be adjourned or postponed by the court, the High Court shall, upon the application of the accused, made by a note addressed to the court, and after hearing parties, consider the whole circumstances of the case, and may in its discretion order the immediate release of the accused, or may grant warrant ordering him to be released on a day named in the warrant, unless he shall on or before such day be remitted to the knowledge of an assize on indictment, or may decline to pronounce any order.
- (3) Where the accused has been incarcerated for 80 days, and an indictment is served upon him, and he is detained in custody after expiry of that period of 80 days, then, unless he is brought to trial and the trial concluded within 110 days of the date of his being committed till liberated in due course of law, he shall be forthwith set at liberty and declared for ever free from all question or process for the crime with which he was charged.
- (4) Where the accused has been liberated from prison after having been committed till liberated in due course of law, he shall not be detained in prison more than 110 days in all; but unless his trial is brought to a conclusion before the expiry of the 110th day of confinement in prison subsequent to commitment till liberated in due course of law, he shall be forthwith set at liberty and declared for ever free from all question or process for the crime for which he was committed.

- (5) Notwithstanding the generality of the foregoing provisions of this section, in any case brought before it under this section, the High Court may order the accused to be kept in custody, with a view to trial, for such further period or periods as to the court may seem just if the court is satisfied that the trial ought to be allowed to proceed after the expiry of the said period of 110 days where the delay in prosecuting to a verdict is due to—
- (a) the illness of the accused or of a judge or juror,
 - (b) the absence or illness of any necessary witness, or
 - (c) any other sufficient cause for which the prosecutor is not responsible.

Accelerated Trial

102 Procedure where accused desires to plead guilty

- (1) Where the accused shall give written notice to the Crown Agent through his own procurator that he desires to have his case at once disposed of, and declares his intention to plead guilty, it shall be lawful to serve the accused with an indictment and a notice to appear at a diet not less than four clear days after such notice before the sheriff before whom under this Part of this Act he would be cited to a first diet, and it shall not be necessary to lodge or give notice of any list of witnesses or productions.

The notice to appear referred to in this subsection shall be in the form set out in Schedule L to the Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form.

- (2) At said diet the sheriff, if any plea of guilty has been accepted by the procurator fiscal, shall deal with the case in like manner as a case where the accused pleads guilty at a first diet:

Provided that if the case is such as can be tried only in the High Court, or is of such an aggravated nature that the sheriff shall hold that the question of punishment should be disposed of by that court, the sheriff shall, by interlocutor written on the record copy of the indictment in the form set out in Schedule M to the said Act of 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form, remit the accused to that court for sentence, and such remit shall be a sufficient warrant to bring the accused, without any further notice, before the High Court for sentence at any Sitting at any place that may be convenient, as the Lord Advocate may order, and the original warrant of commitment of such person till liberated in due course of law shall remain in force until he is brought before the High Court for sentence.

- (3) If the accused when brought before the sheriff on such indictment shall plead not guilty to the charge or plead guilty only to a part of the charge, and the procurator fiscal shall decline to accept such restricted plea, then the diet shall be deserted *pro loco et tempore*, and thereafter the procedure against the accused may be according to the other provisions of this Part of this Act.

First Diet

103 Sheriff court case

- (1) At the first diet the procurator fiscal of the district in which such diet is called shall represent Her Majesty's Advocate, unless an advocate depute or the procurator fiscal of the district of the second diet shall do so. Where the case is one the second diet of

which is to be in the sheriff court, the sheriff shall proceed according to the existing law and practice as varied by this Part of this Act, and where the sheriff presiding is not the sheriff of the court of the second diet, he shall have all the powers exercised under the existing law and practice by a sheriff at a first diet.

- (2) Where the accused pleads guilty in whole or in part, the sheriff shall have power to adjourn the case to another sitting of his court with a view to considering what sentence should be pronounced, whether the case be one the second diet of which is to be called in his own or another court; and where the second diet is fixed for a different court any interlocutor disposing of any preliminary plea, any plea tendered, any interlocutor adjourning the case, or any sentence pronounced shall be written on the record copy of the indictment.
- (3) Where the accused pleads guilty to the indictment or any part thereof, he shall be required to sign the same if he be able to write; and in every case the sheriff shall append his signature to the plea recorded.
- (4) Where—
 - (a) the accused pleads guilty only to a part of the charge, or to a minor offence included in the charge, and the prosecutor does not accept such plea, or
 - (b) where on a plea of guilty to the whole charge the sheriff shall consider it expedient in the circumstances, whether on the representation of the accused or otherwise, that the sentence to be pronounced should be determined by the sheriff of the district in which the second diet is to be called,the sheriff shall sign an interlocutor on said record copy in the form set out in Schedule H to the Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form, and the sheriff clerk shall record any interlocutor signed, plea tendered or sentence pronounced, in the books of court, or in a record to be kept for the purpose, and shall forthwith transmit the record copy of the indictment to the sheriff clerk of the district of the court of the second diet.
- (5) Nothing contained in this section shall require a plea tendered by or on behalf of a company to be signed.

104 Remit to High Court for sentence

In any proceedings on indictment in which the second diet is to be in the sheriff court—

- (a) where the accused shall either at the first or at the second diet plead guilty in whole or in part, and the prosecutor shall accept such plea, or
- (b) where the accused shall at the second diet be found guilty in whole or in part by verdict of the jury.

the sheriff, if he shall hold that any sentence which he can competently pronounce is inadequate and that the question of punishment should be disposed of by the High Court.—

- (i) shall endorse upon the record copy of the indictment a certificate of the plea tendered or of the verdict returned, and
- (ii) shall by interlocutor written on the said record copy remit the accused to the said court for sentence, and
- (iii) may, if he shall think fit, append to such interlocutor a note setting forth the reasons for such remit, and such remit shall be of the like force and effect in all respects as a remit in terms of section 102 of this Act.

105 High Court case

- (1) At the first diet, where the case is one in which the second diet is to be in the High Court, the sheriff shall hear any objection of a preliminary nature, whether to the citation or relevancy or otherwise.
- (2) If—
 - (a) the sheriff shall be of opinion, upon any objection made to—
 - (i) any discrepancy between the record copy of the indictment and the service copy, or
 - (ii) any error or deficiency in such service copy, or in the notice of citation,
that such discrepancy, error or deficiency could not mislead or prejudice the accused, or
 - (b) he shall be of opinion that any other preliminary objection made is frivolous, or
 - (c) no preliminary objection be made,
 the sheriff shall call upon the accused to plead guilty or not guilty, and shall endorse upon the record copy of the indictment a certificate of the plea tendered in the form set out in Schedule 1 to the Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form.
- (3) Where the accused pleads guilty to the indictment or any part thereof, he shall be required to sign the same if he is able to write ; and in every case the sheriff shall append his signature to the plea recorded.
- (4) Where the sheriff shall hold such a discrepancy, error or deficiency as aforesaid to be one which tends substantially to mislead and prejudice the accused, or where any other preliminary objection shall be held by him not to be frivolous, he shall endorse upon the record copy of the indictment a certificate in the form set out in Schedule K to the said Act of 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form, and the sheriff clerk shall record any certificate so written on such record copy in the books of court or in a record to be kept for the purpose, and shall forthwith transmit the record copy of the indictment to the Clerk of Justiciary.
- (5) Nothing contained in this section shall require a plea tendered by or on behalf of a company to be signed.

106 Power to convict on plea of guilty to offence other than that charged in indictment

If a person charged on indictment with any crime or offence tenders a plea of guilty of any other crime or offence of which he could competently, by virtue of any enactment, be found guilty on the trial of such indictment, and if the plea is accepted by the prosecutor it shall be competent to convict such person of the crime or offence to which he has so pled guilty and to sentence him accordingly.

107 Solicitor of place of second diet may defend at both diets

In all cases a solicitor who is entitled to conduct proceedings in the courts of the district of the second diet shall be entitled to appear at the first diet and to conduct the defence, although he may not be entitled to conduct other law business in the locality of the first diet.

108 Certain objections competent only at first diet

No objection by the accused to the validity of the citation against him, on the ground of any discrepancy between the record copy of the indictment and the copy served on him, or on account of any error or deficiency in such service copy or in the notice of citation, shall be competent unless the same be stated to the sheriff at the first diet before the accused is called upon to plead, and no such discrepancy, error or deficiency shall entitle the accused to object to plead to such indictment unless the sheriff shall be satisfied that the same tended substantially to mislead and prejudice the accused.

109 Interlocutor of relevancy unnecessary

It shall not be necessary to enter upon the record an interlocutor finding the indictment relevant and, when objections are taken to the relevancy, it shall not be necessary to enter on the record copy of the indictment or in the record any other minute setting forth how such objections were disposed of, except that such objections were sustained or repelled, and such minute shall be signed by the clerk of court.

110 Where sentence delayed, original warrant of commitment stands

In all cases where the accused pleads guilty at the first diet and is not forthwith sentenced by the sheriff, he shall be detained in custody until he is sentenced, under the existing warrant of commitment, unless the Lord Advocate shall consent to his being suffered to go at large, and, where such consent is given, it shall be on such conditions as to bail as the Lord Advocate shall fix, but no unreasonable delay shall be allowed to take place between the time of the accused pleading guilty and his being brought up for sentence.

111 Postponement on old warrant where diet deserted

Where a diet is deserted *pro loco et tempore*, or where a diet is postponed or adjourned, or an order issued for the trial to take place at a different place from that first given notice of, it shall not be necessary that a new warrant should be granted for the incarceration of the accused, but the warrant of commitment on which he is at the time in custody till liberated in due course of law shall continue in force.

Sittings of High Court

112 Sittings of Court of Justiciary

- (1) All crimes may be tried before any circuit Court of Justiciary by indictment in the same manner as before the High Court at Edinburgh.
- (2) All sittings of the Court of Justiciary shall be sittings of the High Court.

113 Judges in High Court

- (1) Every person who shall be appointed to the office of one of the senators of the College of Justice in Scotland shall, by virtue of such appointment, be a Lord Commissioner of Justiciary in Scotland.

- (2) If any difference shall arise as to the rotation of judges in the High Court, the same shall be determined by the Lord Justice General.
- (3) Any judge or judges in the High Court may discharge the duty of any circuit court, notwithstanding that such judge or judges may not have been specially named for that duty.
- (4) The Lord Justice General, Lord Justice Clerk, or any Lord Commissioner of Justiciary may preside alone at the trial of any panel before the High Court, and when so presiding shall constitute a quorum of the High Court:

Provided that in any trial of difficulty or importance it shall be competent for two or more judges in the High Court to preside.

114 Power to High Court to determine circuits, etc.

- (1) It shall be lawful for the High Court by Act of Adjournal from time to time as to them shall seem necessary after consultation with the Lord Advocate—
 - (a) to alter the existing circuits of the High Court, to form new circuits, and to fix and determine the limits of each existing or new circuit, and the regions and districts or parts thereof which shall be included within the same;
 - (b) to detach any portion of the district exclusively attached to the said High Court sitting at Edinburgh from such district and to include the same in any adjoining circuit or to detach any district from an adjoining district and to include the same in the district exclusively attached to the said High Court sitting at Edinburgh;
 - (c) to fix and determine the number of circuit courts to be held and the places at which the same shall be held within each such circuit in each year, and to define the periods of the year at which such circuit courts shall be held and to alter the same as occasion shall require, and to appoint the particular dates of such courts; and
 - (d) to make such provision as may be necessary for the carrying out of the powers hereinbefore conferred, including such modifications as may appear to be necessary in the existing statutory provisions for preparing and keeping jury books and for making returns of and summoning jurors to serve on any assize for the trial of criminal cases.
- (2) The High Court shall hold such sittings for the trial of criminal cases from time to time as may be necessary on the requisition of the Lord Advocate.

115 Sitting dispensed with

It shall not be necessary for the High Court to proceed to any town for the purpose of holding any court in use to be held in such town, where there are no cases indicted for the sitting of the court at such town, or when so many of the persons indicted thereto have pleaded guilty before the sheriff at the first diet as to make the holding of a special court inexpedient, and in that event such cases as remain for trial may be ordered to be brought up at another sitting of the High Court in manner provided in section 117 of this Act.

116 Adjournalment of second diet

When the accused who is cited to the High Court for the second diet has pleaded guilty at the first diet, it shall be lawful for any Lord Commissioner of Justiciary in chambers, and without the presence of the prosecutor or person accused, to adjourn the second diet to any other sitting of the High Court.

117 Sitting transferred where few cases

- (1) Where so many of the persons who have been indicted for any sitting of the High Court have pleaded guilty at the first diet as to make the holding of a separate court for the cases remaining unnecessary, it shall be lawful for any Lord Commissioner of Justiciary, on the petition of the Lord Advocate, and in chambers and without the presence of the prosecutor or the accused, to order the second diets of such cases to be postponed and to be held at any other sitting of the High Court which is about to be held.
- (2) Upon such order for postponement being issued, a notice shall forthwith be served upon the accused, who may have already been cited, in the form set out in Schedule 0 to the Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form.

118 Trial on adjacent circuit

Where any crime is committed in a circuit district in which no sitting of the High Court falls to be held in ordinary course for some months thereafter, it shall be competent to cite the accused to appear before any earlier sitting of the High Court in an adjacent circuit district.

119 Place of certain trials

Where, because of the distance of any burgh or town from the town in which the High Court usually sits, or for any other cause, it shall be deemed expedient that trials of persons accused of crimes committed in such burgh or town, or in places adjacent thereto, should be tried there instead of being tried at the town in which the court usually sits, it shall be lawful for the High Court at Edinburgh, on the application of the Lord Advocate, to give all such directions in that behalf as the said court shall think fit; and the sheriff of the sheriff court district within which such burgh or town is situated shall give obedience to all directions so given.

120 Notification after first diet of intention to plead guilty

- (1) Where an accused, who has pleaded not guilty at the first diet, shall thereafter, at any time before the date appointed for the second diet in the High Court, give written notice to the Crown Agent through his own procurator that he intends to plead guilty to the charge in whole or in part, and the Lord Advocate shall intimate to the Clerk of Justiciary that he is prepared to accept such plea, section 116 of this Act shall apply to the case of the accused in like manner as if he had pleaded guilty at the first diet, and where the accused shall at the second diet tender a plea not in accordance with the notice, and such plea shall not be accepted by the prosecutor, section 122 of this Act shall apply in like manner as it applies to the case where the High Court allows a plea of guilty to be withdrawn or modified.

- (2) Sections 115 and 117 of this Act shall apply wherever the number of persons indicted for any sitting of the High Court, who have neither pleaded guilty nor in whose cases such notice and intimation as are mentioned in the foregoing subsection have been given, is such as to render the holding of a special or separate court inexpedient or unnecessary.

Procedure at Trial

121 Second diet-Transcript of procedure at first diet

- (1) At the calling of the second diet in the sheriff court in the same sheriff court district as the court of the first diet, the procedure shall be in accordance with the existing law and practice as varied by the provisions of this Part of this Act.
- (2) When the second diet is in the sheriff court of a different sheriff court district, or in the High Court, the clerk of court shall on the diet being called enter in the books of court, or in a record to be kept for the purpose, a transcript of the procedure at the first diet as endorsed on the record copy of the indictment by the sheriff who presided at that diet, and thereafter, if in the sheriff court, the case shall, after the plea of the accused has been tendered and recorded, proceed in accordance with the existing law and practice as varied by the provisions of this Part of this Act.

122 Review at second diet in High Court

- (1) Where a person accused is cited to the High Court for the second diet, that court shall have power to review the proceedings at the first diet and the following provisions of this section shall apply.
- (2) Where the accused has pleaded guilty to the whole or any part of the charge at the first diet, the High Court may at such second diet, if it shall be shown that such plea was taken—
- (a) to an incompetent or irrelevant charge, or
 - (b) under substantial error or misconception, or
 - (c) under circumstances which tended to prejudice the accused,
- allow such plea to be withdrawn or modified.
- (3) Where such plea is so withdrawn or modified, the court shall on the motion of the prosecutor desert the diet *pro loco et tempore*, or postpone the trial to a later date, which shall be notified to the accused in open court.
- (4) Where such postponement makes it necessary that the jury for the trial of the case shall be taken from a different list from that of which notice was given to the accused, such list shall be prepared, signed, and kept in the office of the appropriate sheriff clerk within three clear days of such postponement in the manner provided in section 96 of this Act.

123 Amendment of indictment

- (1) No trial shall fail or the ends of justice be allowed to be defeated by reason of any discrepancy or variance between the indictment and the evidence.

- (2) It shall be competent at any time prior to the determination of the case, unless the court see just cause to the contrary, to amend the indictment by deletion, alteration or addition, so as to cure any error or defect therein, or to meet any objection thereto, or to cure any discrepancy or variance between the indictment and the evidence.
- (3) Nothing in this section shall authorise an amendment which changes the character of the offence charged, and, if the court shall be of opinion that the accused may in any way be prejudiced in his defence on the merits of the case by any amendment made under this section, the court shall grant such remedy to the accused by adjournment or otherwise as to the court may seem just.
- (4) An amendment made under this section shall be sufficiently authenticated by the initials of the clerk of court.

124 On plea of guilty, jury to be dispensed with and sentence pronounced

When a person indicted shall plead guilty to the crime or crimes of which he is accused, it shall not be necessary to name a jury for the trial of the case, but the court before which the accused shall be tried shall have power forthwith to pronounce sentence in like manner as if a verdict of guilty had been returned.

Provided that such plea of guilty shall be made in open court, and shall then and there be subscribed by the panel, and shall be authenticated by the signature of the judge.

125 On plea of not guilty, jury to be balloted and sworn

In the High Court, when the accused pleads not guilty, the clerk of the court shall make an entry in the record, that in respect that the panel pleaded not guilty, the panel was remitted to an assize, and that the following jurymen were balloted for and duly sworn to try the libel, and he shall proceed at once to ballot for and swear the jury.

126 On plea of not guilty, the indictment need not be read over

When the accused, on being brought to the bar, shall say that he means to plead not guilty, and does not desire that the indictment should be read over, it shall not be necessary to read it over before proceeding with the trial.

127 Procedure where trial does not take place

- (1) Where at the second diet—
 - (a) the diet has been deserted *pro loco et tempore* for any of the causes set forth in section 122 of this Act, or
 - (b) an indictment is for any cause not brought to trial and no order has been given by the court postponing such trial or appointing it to be held at a subsequent date at some other sitting of the court,

it shall be lawful at any time within nine clear days after the date of such second diet to give notice to the accused on another copy of the indictment to appear to answer such indictment at a further diet either in the High Court or in the sheriff court when the charge is one that can be lawfully tried in that court, notwithstanding that the original citation to a second diet was to a different court.

- (2) The notice referred to in subsection (1) of this section shall be in the form set out in Schedule N to the Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form.
- (3) The further diet specified in the notice referred to in subsection (1) of this section shall be not earlier than nine clear days from the giving of such notice.
- (4) On or before the day on which such notice is given, a list of jurors shall be prepared, signed and kept by the sheriff clerk of the district to which such notice applies in the manner provided in section 96 of this Act.

128 Provision for death or illness of judge

- (1) Where the court is unable to proceed owing to the death or illness of the presiding judge, it shall be lawful for the clerk of court—
 - (a) in the case where the diet has not been called, to convene the court and adjourn the diet and any other diet appointed for that sitting to a later sitting;
 - (b) in the case where the diet has been called but no evidence has been led, to adjourn the diet or any other diet appointed for that sitting to a later sitting; and
 - (c) where evidence has been led, to desert the diet *pro loco et tempore* and to discharge the jury ;
 and any such continuation, adjournment, desertion or other proceeding shall be entered in the record by the clerk of court.
- (2) Where a diet is deserted in pursuance of subsection (1)(c) of this section the Lord Advocate may raise and insist in a new indictment, and in any such case where the accused is in custody it shall not be necessary that a new warrant for his incarceration be granted, and the warrant of commitment on which he is at the time in custody till liberation in due course of law shall continue in force, and in any such case where the accused is at liberty on bail his bail shall continue in force.

129 Jury to be chosen by ballot in open court

The jurors for the trial of any case shall be chosen in open court by ballot from the list of persons summoned which has been served upon the accused; and for that purpose the clerk of the court shall cause the name and designation of each juror to be written on a separate piece of paper or parchment, all the pieces being of the same size, and shall cause the pieces to be rolled up, as nearly as may be, in the same shape, and to be put into a box or glass and mixed, and the clerk shall draw out the said pieces of paper or parchment one by one from the box or glass; and if any of the persons whose names shall be so drawn shall not appear, or shall be challenged, with or without cause assigned, and set aside, then such further number shall be drawn until the number required for the trial shall be made out; and the persons so drawn and appearing, and being sworn, shall be the jury to try the accused, and their names shall be recorded in the minute book kept by the clerk.

130 Challenges and objections to jurors

- (1) Each accused on trial may challenge five of the jurors, and the prosecutor may challenge five of the jurors in all, for any one trial, without being obliged to assign any reason therefor.

- (2) A challenge of a juror shall be made when the name of that juror is balloted and shall not afterwards be allowed.
- (3) Such challenge shall of itself disqualify the person challenged from serving as a juror at the trial.
- (4) Nothing in this section shall affect the right of the accused or the prosecutor to object to any juror on cause shown.
- (5) If any objection is taken to a juror on cause shown and such objection is founded on the want of sufficient qualification as provided by section 1 of the Jurors (Scotland) Act 1825, such objection shall be proved only by the oath of the juror objected to.
- (6) No objection to a juror shall be competent after he has been sworn to serve.

131 Juror without citation not to be objected to

It shall not be competent for the accused or the prosecutor to object to a juror on the ground that such juror has appeared without citation or without having been duly cited to attend.

132 Jurors chosen for one trial may continue to serve

- (1) The jurors chosen for any particular trial may, when that trial is disposed of, without any new ballot, serve on the trials of other persons accused, provided that—
 - (a) such persons and the prosecutor consent thereto,
 - (b) the names of such jurors are contained in the list of assize, and
 - (c) such jurors are duly sworn to serve on each successive trial.
- (2) Where the trials referred to in subsection (1) of this section are in the High Court, the clerk of court shall at the commencement of the first of such trials engross the names and designations of the jurors in the record thereof, and in the record of the subsequent trial or trials it shall be sufficient to mention that the jurors who passed upon the preceding trial or trials also passed upon the assize of the panel or panels then under trial, no objection having been made to the contrary, the said jurors being always sworn together in presence of each panel or set of panels respectively.

133 Jurors may be excused

The court shall have power to excuse any juror from serving on any trial, the grounds of such excuse being stated in open court.

134 Provision for death or illness of jurors

Where in the course of any trial any juror dies, or the court is satisfied that any juror is, through illness or for any other reason, unfit to continue to serve as a juror, the court may in its discretion, on application made by or on behalf of the Lord Advocate or an accused, direct that the trial shall proceed before the remaining jurors (if they shall be not less than twelve in number), and where any such direction is given the remaining jurors shall be deemed in all respects to be a properly constituted jury for the purpose of the trial and shall have power to return a verdict accordingly whether unanimous or by majority :

Provided that the remaining jurors shall not be entitled to return a verdict of guilty by majority unless at least eight of their number are in favour of such verdict and if, in any such case, the remaining jurors shall inform the court that fewer than eight of their number are in favour of a verdict of guilty, and that there is not a majority in favour of any other verdict, they shall be deemed to have returned a verdict of not guilty.

135 Clerk to state charge, and swear jury

When a jury has been balloted, the clerk of court shall inform the jury of the charge against the accused either by reading the same in the words of the indictment (with the substitution of the third person for the second) or, if the presiding judge shall, because of the length or complexity of the indictment, so direct, by reading to the jury a summary of the charge approved by the judge; and the clerk of court shall thereafter administer the oath in common form ; and it shall not be necessary to lay before the jury copies of the indictment, list of witnesses or list of productions, but it shall nevertheless be competent to the presiding judge, if he shall think fit, to direct that copies of the indictment (without any list of witnesses or of productions appended) shall be laid before the jury.

136 Trial to be continuous

Every trial shall proceed from day to day till concluded unless the court shall see cause to adjourn over a day or days.

137 Seclusion of jury

It shall not be necessary, when for any cause a trial which is proceeding is adjourned from one day to another, that the jury shall be secluded during the adjournment, except in cases where the court shall see fit, whether ex proprio motu or on the motion of the prosecutor or the accused, to order that the jury be kept secluded.

138 Witnesses not to be excluded by reason of conviction, interest, etc.

- (1) No person adduced as a witness shall be excluded from giving evidence by reason of having been convicted of or having suffered punishment for crime, or by reason of interest, or by reason of agency or of partial counsel, or by reason of having appeared without citation or without having been duly cited to attend, or by reason of having been precognosced subsequently to the date of citation.
- (2) Every person so adduced, who is not otherwise by law disqualified from giving evidence, shall be admissible as a witness, notwithstanding any objection offered on any of the above-mentioned grounds.
- (3) Nothing in this section shall prevent such witness from being examined on any point tending to affect his credibility.
- (4) Where any person who is or has been an agent of the accused shall be adduced and examined as a witness for the accused, it shall not be competent to the accused to object, on the ground of confidentiality, to any question proposed to be put to such witness on matter pertinent to the issue of the guilt of the accused.

139 Witnesses admissible notwithstanding relationship to parties

It shall be no objection to the admissibility of any witness that he or she is the father, mother, son, daughter, brother or sister, by consanguinity or affinity, or uncle, aunt, nephew or niece, by consanguinity of any party adducing such witness in any trial; nor shall it be competent to any witness to decline to be examined and give evidence on the ground of any such relationship.

140 Presence in court not to disqualify witnesses in certain cases 141. Accused and spouse competent witnesses for defence

In any trial the court need not reject any witness against whom it is objected that he has, without the permission of the court, and without the consent of the party objecting, been present in court during the proceedings; but the court may, in its discretion, admit the witness, where it appears to the court that the presence of the witness was not the result of culpable negligence or criminal intent, and that the witness has not been unduly instructed or influenced by what took place during his presence, or that injustice will not be done by his examination.

141 The accused and the spouse of the accused shall be competent witnesses for the defence at every stage of the case, whether the accused is on trial alone or along with a co-accused:

Provided that—

- (a) the accused shall not be called as a witness in pursuance of this section except upon his own application;
- (b) the failure of the accused or the spouse of the accused to give evidence shall not be commented upon by the prosecution;
- (c) the spouse of the accused shall not, save as mentioned in section 143 of this Act, be called as a witness in pursuance of this section except upon the application of the accused;
- (d) nothing in this section or in section 143 of this Act shall compel a spouse to disclose any communication made to him or her by the other spouse during the marriage ;
- (e) the accused who gives evidence on his own behalf in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged;
- (f) the accused who gives evidence on his own behalf in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless—
 - (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged ; or
 - (ii) the accused or his counsel or solicitor has asked questions of the witnesses for the prosecution with a view to establish the accused's good character, or the accused has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of the witnesses for the prosecution; or

- (iii) the accused has given evidence against any other person charged with the same offence;
- (g) every person called as a witness in pursuance of this section or section 143 of this Act shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

142 Evidence of accused

Where the only witness to the facts of the case called by the defence is the accused, he shall be called as a witness immediately after the close of the evidence for the prosecution.

143 Spouse as witness in certain cases

- (1) The spouse of a person charged with—
 - (a) bigamy,
 - (b) any offence mentioned in Schedule 1 to this Act or
 - (c) any offence under any enactment mentioned in Schedule 4 to this Act,may be called as a witness either for the prosecution or for the defence without the consent of the person charged.
- (2) Nothing in this section or in section 141 or 346 of this Act shall affect a case where the spouse of a person charged with an offence may at common law be called as a witness without the consent of that person.

144 Notice of spouse as witness

In a case where a list of witnesses is required, the husband or wife of the accused shall not be called as a witness for the defence unless notice has been given in the terms prescribed by section 82 of this Act.

145 Trial in open court

- (1) Without prejudice to section 174 of this Act, no part of a trial shall take place outwith the presence of the accused.
- (2) Where a debate has taken place on the relevance of an indictment, the judge shall give his decision as to relevance in open court in the presence of the accused.
- (3) From the commencement of the leading of evidence in a trial for rape or the like the judge may, if he thinks fit, cause all persons other than the accused and counsel and solicitors to be removed from the court-room.
- (4) Any person who interrupts or disturbs the court shall be liable to imprisonment or a fine or both as the judge thinks fit.

146 Sheriff's notes of evidence

The sheriff who has presided at a trial shall duly authenticate and preserve the notes of the evidence taken by him in the trial and, if called upon to do so by the High Court, shall exhibit them, or a certified copy thereof, to the High Court.

147 Witness may be examined, etc., as to having previously made a different statement

In any trial, any witness may be examined as to whether he has on any specified occasion made a statement on any matter pertinent to the issue at the trial different from the evidence given by him in such trial; and in such trial evidence may be led to prove that such witness has made such different statement on the occasion specified.

148 Examination of witness

In any trial, it shall be competent for the party against whom a witness is produced and sworn in causa to examine such witness, not in cross only, but also in causa.

149 Witness may be recalled

In any trial, on the motion of either party, the presiding judge may permit a witness who has been examined to be recalled.

150 Admissions and agreements as to evidence

- (1) In any trial, where the accused is legally represented, it shall not be necessary for the accused or for the prosecutor to prove any fact which is admitted by the other, or to prove any document, the terms and application of which are not in dispute between them; and a copy of any document may, where they so agree, be accepted as equivalent to the original document.
- (2) For the purposes of the foregoing subsection any admission or agreement shall be made by lodging with the clerk of court a minute in that behalf signed—
 - (a) in the case of an admission, by the person making the admission if he is the prosecutor, or by his counsel or solicitor if that person is the accused, and
 - (b) in the case of an agreement, by the prosecutor and the counsel or solicitor of the accused.
- (3) Where a minute has been signed and lodged as aforesaid, any facts and documents admitted or agreed thereby shall be deemed to have been duly proved ; and a copy of any document so agreed to be accepted as equivalent to the original document shall be accepted as so equivalent.

151 Declarations to be received in evidence without being sworn to by witnesses

- (1) The declaration of the accused, the formal parts of which may be written or printed, or partly written and partly printed, duly authenticated by a justice as having been emitted before him according to the existing law and practice, shall be received in evidence without being sworn to by witnesses, and it shall not be necessary to insert the names of any witnesses to the declaration in any list of witnesses, either for the prosecution or for the defence.
- (2) It shall be competent for the defence, before such declaration is read to the jury, to adduce as witnesses the persons who were present when the declaration was emitted, and to examine them upon any matters regarding such declaration on which it would be competent to examine them according to the existing law and practice, and to move the court to refuse to allow the declaration to be read on grounds appearing on the face of the declaration itself, or on the ground of what is disclosed in such evidence or on

both of these grounds, and where the defence objects to the declaration, the prosecutor shall be entitled to examine any witnesses in regard thereto, whom the defence may be entitled to examine as aforesaid.

152 Defence to speak last

In any trial the accused or, where he is legally represented, his counsel or solicitor shall have the right to speak last.

153 Seclusion of jury, etc., after retiral

- (1) As soon as the whole case for the prosecution and defence has been heard by the court, if any of the jurors has any doubt which he would like resolved, he shall raise the same in the presence of the accused in court before retiring to the jury room.
- (2) When the jury retire to consider their verdict, the clerk of court shall enclose the jury in a room by themselves and neither he nor any other person shall be present with the jury after they are enclosed.
- (3) No person shall visit the jury on the pretext of further information, of resolving any doubt or on any other pretext or for any other purpose whatever; nor shall the jury come out of the jury room for any cause whatever or adjourn until they return their verdict except where they may wish to have a direction from the judge or to make any request regarding any matter in the cause as, for example, to make available any production for examination by the jury.
- (4) If any prosecutor or other person contravenes the provisions of this section, the accused shall be acquitted of the crime with which he is charged.

154 Oral verdicts to be returned by juries

The verdict of the jury, whether the jury are unanimous or not, shall be returned orally by the foreman of the jury unless the court shall direct a written verdict to be returned:

Provided that where the jury are not unanimous in their verdict, the foreman shall announce that fact so that the relative entry may be made in the record; and provided also that after the jury are enclosed, none of the jurors shall be allowed to separate or to hold communication with other persons until their verdict shall have been returned in their presence by the foreman.

155 Verdicts may be returned by juries without retiring

It shall be lawful for the court to receive a verdict from a jury orally through the foreman of the jury after consultation in the jury box, although the said verdict be not arrived at after the jury shall have been enclosed, and to cause the same to be taken down and recorded; and, in a case where the jury retire and are enclosed to consider their verdict, it shall also be lawful for the court to receive such verdict orally through the foreman of the jury, in presence of the panel, provided the judge is then sitting in court, so that the jury may straightaway repair to the presence of the court attended by an officer of the court.

156 Interruption of trial for verdict in earlier trial

- (1) When in any criminal trial the jury shall have retired to consider their verdict, and, owing to delay in returning their verdict or for other sufficient reason, the diet in another criminal cause has been called, then, subject to the following provisions of this section, it shall be lawful to interrupt the proceedings in such other cause—
 - (a) in order to receive the verdict of the jury in the preceding trial, and thereafter to dispose of the cause either by passing sentence upon the panel, or by postponing sentence, or by assoilzing the panel, as the case may be;
 - (b) to give a direction to the jury in the preceding trial upon any matter upon which the jury may wish a direction from the judge or to hear any request from the jury regarding any matter in the cause, as, for example, to make available any production for examination by the jury.
- (2) Whether in any cause interruption shall be allowed shall be a matter in the discretion of the judge who presides at the trial.
- (3) In no case shall the verdict of the jury in the preceding trial be returned, or sentence be imposed upon the panel, or any direction be asked or given, or any request be heard or granted, in the presence of the jury in the interrupted trial, but in every case such jury shall be directed to retire by the presiding judge.
- (4) In the case of any such interruption a minute of continuation of the diet of the interrupted trial shall be entered in the minute book of the court, and it shall be sufficient that the minute shall bear that the diet be continued until later in the same day without further specification of time, or to the following or a subsequent day as the court may direct.
- (5) The court may remand the jury in the preceding trial, and order them to be re-enclosed and to prepare a verdict in writing.
- (6) On the interrupted trial being resumed the diet shall be called de novo.

157 Interruption of trial for plea or sentence in another cause

- (1) Where in any cause the diet of which has not been called, the panel shall intimate through his counsel to the clerk of court that he is prepared to tender a plea of guilty as libelled or such qualified plea as the Crown is prepared to accept, or where a cause is remitted to the High Court for sentence in which the panel has pleaded guilty under section 102 of this Act, then, subject to the following provisions of this section, any trial (other than a trial for murder) then proceeding may be interrupted for the purpose of receiving such plea or dealing with said remitted cause and pronouncing sentence or otherwise disposing of any such cause.
- (2) In the case of any such interruption an entry will be duly made in the minute book of the court continuing the diet of the interrupted trial until later in the same day without further specification of time, or to the following or a subsequent day as the court may direct.
- (3) In any such interposed cause, the plea of the panel shall not be tendered or accepted, nor sentence passed, in the presence of the jury in the interrupted trial, but said jury if not already retired shall be directed by the presiding judge to retire.

158 No proceeding under section 156 or 157 of this Act to be deemed an irregularity

In any case provided for by section 156 or 157 of this Act the interruption thereby occasioned in the proceedings of the court shall not be deemed any irregularity, nor entitle the panel to take any objection to the proceedings.

159 Previous convictions

- (1) A previous conviction may not be libelled as an aggravation of an offence.
- (2) Where a person is convicted of an offence, the court may have regard to any previous conviction in respect of that person in deciding on the disposal of the case.
- (3) Nothing in this section shall affect the sentence which a court may pass on a second or subsequent conviction.

160 Laying of previous convictions before jury

- (1) Previous convictions against the accused shall not be laid before the jury, nor shall reference be made thereto in presence of the jury before the verdict is returned.
- (2) Nothing in this section shall prevent the prosecutor from laying before the jury evidence of previous convictions where, by the existing law, it is competent to lead evidence of such previous convictions as evidence in causa in support of the substantive charge, or where the accused shall lead evidence to prove previous good character.
- (3) It shall not be necessary for the jury to return a verdict finding whether previous convictions against the accused have been proved or not.

161 Laying of previous convictions before judge

- (1) Previous convictions shall not be laid before the presiding judge until the prosecutor moves for sentence, and in that event the prosecutor shall lay before the judge a copy of the notice referred to in subsection (2) or (4) of section 68 of this Act.
- (2) On the conviction of the accused it shall be competent for the court to amend a notice of previous convictions so laid by deletion or alteration for the purpose of curing any error or defect therein:

Provided that no such amendment shall be made to the prejudice of the accused.

- (3) Where any such intimation as is mentioned in section 68 of this Act is given by the accused, it shall be competent to prove any previous conviction included therein in the manner set forth in section 162 of this Act, and the provisions of the said section shall apply accordingly.
- (4) Any conviction which is admitted in evidence by the court shall be entered in the record of the trial.
- (5) Nothing in this section or in section 68 of this Act shall prevent evidence of previous convictions being led in any case where such evidence is competent in support of a substantive charge.

162 Extract convictions to be received and manner of proof

- (1) An extract conviction of any crime committed in any part of the United Kingdom, bearing to be under the hand of the officer in use to give out such extract conviction, shall be received in evidence without being sworn to by witnesses.
- (2) It shall be competent to prove by a witness or witnesses such previous conviction, or any facts relevant to the admissibility of the same, although the name of any such witness is not included in the list served on the accused ; and the accused shall be entitled to examine witnesses in regard thereto.
- (3) An official of any prison in which the accused may have been confined on such conviction shall be a competent and sufficient witness to prove the application thereof to the accused, although he may not have been present in court at the trial to which such conviction relates.

163 Extract conviction to be issued by clerk having record copy of indictment

Where the accused is convicted on indictment in the sheriff court of any crime and an extract of that conviction is subsequently required in evidence, such extract shall be issued by the clerk of the court having the custody of the record copy of the indictment although the plea of the accused may have been taken and the sentence on him pronounced in another court.

164 Proof of previous convictions by fingerprints

- (1) A previous conviction may be proved against any person in any criminal proceedings by the production of such evidence of the conviction as is mentioned in this section and by showing that his fingerprints and those of the person convicted are the fingerprints of the same person.
- (2) A certificate purporting to be signed by or on behalf of the Chief Constable of Strathclyde or the Commissioner of Police of the Metropolis, containing particulars relating to a conviction extracted from the criminal records kept by the person by or on whose behalf the certificate is signed, and certifying that the copies of the fingerprints contained in the certificate are copies of the fingerprints appearing from the said records to have been taken in pursuance of regulations for the time being in force under section 11 of the Prisons (Scotland) Act 1952, or under section 16 of the Prison Act 1952, from the person convicted on the occasion of the conviction or on the occasion of his last conviction, shall be sufficient evidence of the conviction or, as the case may be, of his last conviction and of all preceding convictions and that the copies of the fingerprints produced on the certificate are copies of the fingerprints of the person convicted.
- (3) Where a person has been apprehended and detained in the custody of the police in connection with any criminal proceedings, a certificate purporting to be signed by the chief constable concerned or a person authorised on his behalf, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.
- (4) A certificate purporting to be signed by or on behalf of the governor of a prison or of a remand centre in which any person has been detained in connection with any criminal proceedings, certifying that the fingerprints produced thereon were taken from him

while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.

- (5) A certificate purporting to be signed by or on behalf of the Chief Constable of Strathclyde, and certifying that the fingerprints, copies of which are certified as aforesaid by or on behalf of the Chief Constable or the Commissioner of Police of the Metropolis to be copies of the fingerprints of a person previously convicted and the fingerprints certified by or on behalf of a chief constable or a governor as aforesaid, or otherwise shown, to be the fingerprints of the person against whom the previous conviction is sought to be proved, are the fingerprints of the same person, shall be sufficient evidence of the matter so certified.
- (6) The method of proving a previous conviction authorised by this section shall be in addition to any other method of proving the conviction.

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 to be 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 members or officers of the court or parties to the case, their counsel or solicitors, or persons otherwise directly concerned in the case, 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.

- (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.

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 reporter

Any court by or before which a person is convicted of having committed in respect of a child any of the offences mentioned in Schedule 1 to this Act or any offence under section 21 of the Children and Young Persons (Scotland) Act 1937 may refer the child to the reporter of the local authority in whose area the child resides and certify that the said offence shall be a ground established for the purposes of Part III of the Social Work (Scotland) Act 1968.

169 Power to prohibit publication of certain matter

- (1) In relation to any proceedings in any court, the court may direct that—
 - (a) no newspaper report of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any person under the age of 17 years concerned in the proceedings, either as being the person by or against or in respect of whom the proceedings are taken, or as being a witness therein;
 - (b) no picture shall be published in any newspaper as being or including a picture of any person under the age of 17 years so concerned in the proceedings ;except in so far (if at all) as may be permitted by the direction of the court.
- (2) Any person who publishes any matter in contravention of any such direction shall on summary conviction be liable in respect of each offence to a fine not exceeding £50.
- (3) This section shall, with the necessary modifications, apply in relation to sound and television broadcasts as it applies in relation to newspapers.
- (4) In this section, references to a court shall not include a court in England or Wales.

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.

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 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 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 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 Children and Young Persons (Scotland) Act 1937 or any of the offences mentioned in Schedule 1 to this Act, except an offence under the Criminal Law Amendment Act, 1885, 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 Children and Young Persons (Scotland) Act 1937 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 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 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.

172 Welfare of child

livery 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 reporter of the local authority to arrange for the disposal of the case by a children's hearing; or
 - (b) on that plea or finding may request the reporter of the local authority 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 shall request the

reporter of the local authority 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 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.

Procedure at trial of persons suffering from mental disorder

174 Insanity in bar of trial or as the ground of acquittal

- (1) Where any person charged on indictment with the commission of an offence is found insane so that the trial of that person upon the indictment cannot proceed, or if in the course of the trial of any person so indicted it appears to the jury that he is insane, the court shall direct a finding to that effect to be recorded.
- (2) Where in the case of any person charged as aforesaid evidence is brought before the court that that person was insane at the time of doing the act or making the omission constituting the offence with which he is charged and the person is acquitted, the court shall direct the jury to find whether the person was insane at such time as aforesaid, and to declare whether the person was acquitted by them on account of his insanity at that time.
- (3) Where the court has directed that a finding be recorded in pursuance of subsection (1) of this section, or where a jury has declared that a person has been acquitted by them on the ground of his insanity in pursuance of the last foregoing subsection, the court shall order that the person to whom that finding or that acquittal relates shall be detained in a State hospital or such other hospital as for special reasons the court may specify.
- (4) An order for the detention of a person in a hospital under this section shall have the like effect as a hospital order (within the meaning of section 175(3) of this Act) together with an order restricting his discharge, made without limitation of time; and where such an order is given in respect of a person while he is in the hospital, he shall be deemed to be admitted in pursuance of, and on the date of, the order.
- (5) Where it appears to a court that it is not practicable or appropriate for the accused to be brought before it for the purpose of determining whether he is insane so that his trial cannot proceed, then, if no objection to such a course is taken by or on behalf of the accused, the court may order that the case be proceeded with in his absence.

175 Power of court to order hospital admission or guardianship

- (1) Where a person is convicted in the High Court or the sheriff court of an offence, other than an offence the sentence for which is fixed by law, punishable by that court with imprisonment, and the following conditions are satisfied, that is to say—
 - (a) the court is satisfied, on the written or oral evidence of two medical practitioners (complying with the provisions of section 176 of this Act) that the offender is suffering from mental disorder of a nature or degree which, in the case of a person under 21 years of age, would warrant his admission to a

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

hospital or his reception into guardianship under Part IV of the Mental Health (Scotland) Act 1960, and

- (b) the court is of opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section,

the court may by order authorise his admission to and detention in such hospital as may be specified in the order or, as the case may be, place him under the guardianship of such local authority or of such other person approved by a local authority as may be so specified:

Provided that, where his case is remitted by the sheriff to the High Court for sentence under any enactment, the power to make an order under this subsection shall be exercisable by that court.

- (2) Where it appears to the prosecutor in any court before which a person is charged with an offence that the person may be suffering from mental disorder, it shall be the duty of such prosecutor to bring before the court such evidence as may be available of the mental condition of that person.
- (3) An order for the admission of a person to a hospital (in this Act, referred to as " a hospital order ") shall not be made under this section in respect of an offender unless the court is satisfied that that hospital, in the event of such an order being made by the court, is available for his admission thereto within 28 days of the making of such an order.
- (4) A State hospital shall not be specified in a hospital order in respect of the detention of a person unless the court is satisfied, on the evidence of the medical practitioners which is taken into account under paragraph (a) of subsection (1) of this section, that the offender, on account of his dangerous, violent or criminal propensities, requires treatment under conditions of special security, and cannot suitably be cared for in a hospital other than a State hospital.
- (5) An order placing a person under the guardianship of a local authority or of any other person (in this Act referred to as " a guardianship order ") shall not be made under this section unless the court is satisfied that that authority or person is willing to receive that person into guardianship.
- (6) A hospital order or guardianship order shall specify the form of mental disorder, being mental illness or mental deficiency or both, from which, upon the evidence taken into account under paragraph (a) of subsection (1) of this section, the offender is found by the court to be suffering; and no such order shall be made unless the offender is described by each of the practitioners, whose evidence is taken into account as aforesaid, as suffering from the same form of mental disorder, whether or not he is also described by either of them as suffering from the other form.
- (7) Where an order is made under this section, the court shall not pass sentence of imprisonment or impose a fine or make a probation order in respect of the offence, but may make any other order which the court has power to make apart from this section; and for the purposes of this subsection " sentence of imprisonment" includes any sentence or order for detention.

176 Requirements as to medical evidence

- (1) Of the medical practitioners whose evidence is taken into account under section 175(1) (a) of this Act, at least one shall be a practitioner approved for the purposes of section 27 of the Mental Health (Scotland) Act 1960 by a Health Board as having special experience in the diagnosis or treatment of mental disorder.
- (2) For the purposes of the said section 175(1)(a) a report in writing purporting to be signed by a medical practitioner may, subject to the provisions of this section, be received in evidence without proof of the signature or qualifications of the practitioner; but the court may, in any case, require that the practitioner by whom such a report was signed be called to give oral evidence.
- (3) Where any such report as aforesaid is tendered in evidence, otherwise than by or on behalf of the accused, then—
 - (a) if the accused is represented by counsel or solicitor, a copy of the report shall be given to his counsel or solicitor;
 - (b) if the accused is not so represented, the substance of the report shall be disclosed to the accused or, where he is a child under 16 years of age, to his parent or guardian if present in court;
 - (c) in any case, the accused may require that the practitioner by whom the report was signed be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by or on behalf of the accused;and where the court is of opinion that further time is necessary in the interests of the accused for consideration of that report, or the substance of any such report, it shall adjourn the case.
- (4) For the purpose of calling evidence to rebut the evidence contained in any such report as aforesaid, arrangements may be made by or on behalf of an accused person detained in a hospital for his examination by any medical practitioner, and any such examination may be made in private.

177 Supplementary provisions as to hospital orders

The court by which a hospital order is made may give such directions as it thinks fit for the conveyance of the patient to a place of safety and his detention therein pending his admission to the hospital within the period of 28 days referred to in section 175(3) of this Act; but a direction for the conveyance of a patient to a residential establishment provided by a local authority under Part IV of the Social Work (Scotland) Act 1968 shall not be given unless the court is satisfied that that authority is willing to receive the patient therein.

178 Power of court to restrict discharge from hospital

- (1) Where a hospital order is made in respect of a person, and it appears to the court, having regard to the nature of the offence with which he is charged, the antecedents of the person and the risk that as a result of his mental disorder he would commit offences if set at large, that it is necessary for the protection of the public so to do, the court may, subject to the provisions of this section, further order that the person shall be subject to the special restrictions set out in section 60(3) of the Mental Health (Scotland) Act 1960, either without limit of time or during such period as may be specified in the order.

- (2) An order under this section (in this Act referred to as " an order restricting discharge ") shall not be made in the case of any person unless the medical practitioner approved by the Health Board for the purposes of section 27 of the Mental Health (Scotland) Act 1960, whose evidence is taken into account by the court under section 175(1)(a) of this Act, has given evidence orally before the court.
- (3) Where an order restricting the discharge of a patient is in force, a guardianship order shall not be made in respect of him; and where the hospital order relating to him ceases to have effect by virtue of section 58(4) of the Mental Health (Scotland) Act 1960 on the making of another hospital order, that order shall have the same effect in relation to the order restricting discharge as the previous hospital order, but without prejudice to the power of the court making that other hospital order to make another order restricting discharge to have effect on the expiration of the previous such order.

CONVICTION AND SENTENCE

Adjournment and remand

179 Power of court to adjourn a case before sentence

It is hereby declared that the power of a court to adjourn the hearing of a case includes power, after a person has been convicted or the court has found that he committed the offence and before he has been sentenced or otherwise dealt with, to adjourn the case for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with his case:

Provided that a court shall not for the purpose aforesaid adjourn the hearing of a case for any single period exceeding three weeks.

180 Remand for inquiry into physical or mental condition

- (1) Without prejudice to any powers exercisable by a court under the last foregoing section, where a person is charged before a court with an offence punishable with imprisonment, and the court is satisfied that he did the act or made the omission charged but is of opinion that an inquiry ought to be made into his physical or mental condition before the method of dealing with him is determined, the court shall remand him in custody or on bail for such period or periods, no single period exceeding three weeks, as the court thinks necessary to enable a medical examination and report to be made.
- (2) Where a person is remanded on bail under this section, bail shall be found by bail bond, and it shall be a condition of the bond that he shall—
- (a) undergo a medical examination by a duly qualified medical practitioner or, where the inquiry is into his mental condition and the bond so specifies, two such practitioners; and
 - (b) for the purpose attend at an institution or place, or on any such practitioner specified in the bond and, where the inquiry is into his mental condition, comply with any directions which may be given to him for the said purpose by any person so specified or by a person of any class so specified ;

and, if arrangements have been made for his reception, it may be a condition of the bond that the person shall, for the purpose of the examination, reside in an institution or place specified as aforesaid, not being an institution or place to which he could have

been remanded in custody, until the expiry of such period as may be so specified or until he is discharged therefrom, whichever first occurs.

- (3) Where a person remanded on bail under this section fails to comply with any such condition of the bond as is mentioned in the last foregoing subsection, the bail may be forfeited.
- (4) On exercising the powers conferred by this section the court shall—
 - (a) where the person is remanded in custody, send to the institution or place in which he is detained, and
 - (b) where the person is released on bail, send to the institution or place at which or the person by whom he is to be examined,

a statement of the reasons for which the court is of opinion that an inquiry ought to be made into his physical or mental condition, and of any information before the court about his physical or mental condition.

Admonition and discharge

181 Admonition

A court may, if it appears to meet the justice of the case, dismiss with an admonition any person found guilty by the court of any offence.

182 Absolute discharge

Where a person is convicted of an offence (other than an offence the sentence for which is fixed by law) the court, if it is of opinion, having regard to the circumstances, including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate may, instead of sentencing him, make an order discharging him absolutely.

Probation

183 Probation

- (1) Where a person is convicted of an offence (other than an offence the sentence for which is fixed by law), the court, if it is of opinion having regard to the circumstances, including the nature of the offence and the character of the offender, that it is expedient to do so, may instead of sentencing him make a probation order, that is to say an order requiring the offender to be under supervision for a period to be specified in the order of not less than one nor more than three years.
- (2) A probation order shall be as nearly as may be in the form prescribed by Act of Adjournal, and shall name the local authority area in which the offender resides or is to reside and the order shall make provision for the offender to be under the supervision of an officer of the local authority of that area, or, where the offender resides or is to reside in a local authority area in which the court has no jurisdiction the court shall name the appropriate court (being such a court as could have been named in any amendment of the order in accordance with the provisions of Schedule 5 to this Act) in the area of residence or intended residence, and the court last mentioned shall require the local authority for that area to arrange for the offender to be under the supervision of an officer of that authority.

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- (3) Subject to the provisions of Schedule 5 to this Act relating to probationers who change their residence, an offender in respect of whom a probation order is made shall be required to be under the supervision of an officer of the local authority as aforesaid.
- (4) Subject to the provisions of the next following section, a probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition by him of the offence or the commission of other offences.
- (5) Without prejudice to the generality of the last foregoing subsection, a probation order may include requirements relating to the residence of the offender:
Provided that—
 - (a) before making an order containing any such requirements, the court shall consider the home surroundings of the offender; and
 - (b) where the order requires the offender to reside in any institution or place, the name of the institution or place and the period for which he is so required to reside shall be specified in the order, and that period shall not extend beyond 12 months from the date of the requirement or beyond the date when the order expires.
- (6) Before making a probation order, the court shall explain to the offender in ordinary language the effect of the order (including any additional requirements proposed to be inserted therein under subsection (4) or (5) of this section or under the next following section) and that if he fails to comply therewith or commits another offence during the probation period he will be liable to be sentenced for the original offence and the court shall not make the order unless the offender expresses his willingness to comply with the requirements thereof.
- (7) The clerk of the court by which a probation order is made or of the appropriate court, as the case may be, shall cause copies thereof to be given to the officer of the local authority who is to supervise the probationer, to the probationer, and to the person in charge of any institution or place in which the probationer is required to reside under the probation order.

184 Probation orders requiring treatment for mental condition

- (1) Where the court is satisfied, on the evidence of a registered medical practitioner approved for the purposes of section 27 of the Mental Health (Scotland) Act 1960, that the mental condition of an offender is such as requires and may be susceptible to treatment but is not such as to warrant his detention in pursuance of a hospital order under Part V of that Act, or under this Act, the court may, if it makes a probation order, include therein a requirement that the offender shall submit, for such period not extending beyond 12 months from the date of the requirement as may be specified therein, to treatment by or under the direction of a registered medical practitioner with a view to the improvement of the offender's mental condition.
- (2) The treatment required by any such order shall be such one of the following kinds of treatment as may be specified in the order, that is to say—
 - (a) treatment as a resident patient in a hospital within the meaning of the Mental Health (Scotland) Act 1960, not being a State hospital within the meaning of the Act;

- (b) treatment as a non-resident patient at such institution or place as may be specified in the order; or
 - (c) treatment by or under the direction of such registered medical practitioner as may be specified in the order;but except as aforesaid the nature of the treatment shall not be specified in the order.
- (3) A court shall not make a probation order containing such a requirement as aforesaid unless it is satisfied that arrangements have been made for the treatment intended to be specified in the order, and, if the offender is to be treated as a resident patient, for his reception.
- (4) While the probationer is under treatment as a resident patient in pursuance of a requirement of the probation order, any officer responsible for his supervision shall carry out the supervision to such extent only as may be necessary for the purpose of the discharge or amendment of the order.
- (5) Where the medical practitioner by whom or under whose direction a probationer is being treated for his mental condition in pursuance of a probation order is of opinion that part of the treatment can be better or more conveniently given in or at an institution or place not specified in the order, being an institution or place in or at which the treatment of the probationer will be given by or under the direction of a registered medical practitioner, he may, with the consent of the probationer, make arrangements for him to be treated accordingly ; and the arrangements may provide for the probationer to receive part of his treatment as a resident patient in an institution or place notwithstanding that the institution or place is not one which could have been specified in that behalf in the probation order.
- (6) Where any such arrangements as are mentioned in the last foregoing subsection are made for the treatment of a probationer—
 - (a) the medical practitioner by whom the arrangements are made shall give notice in writing to any officer responsible for the supervision of the probationer, specifying the institution or place in or at which the treatment is to be carried out; and
 - (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the probation order.
- (7) Subsections (2), (3) and (4) of section 176 of this Act shall apply for the purposes of this section as if for the reference in the said subsection (2) to section 175(1)(a) of this Act there were substituted a reference to subsection (1) of this section.
- (8) Except as provided by this section, a court shall not make a probation order requiring a probationer to submit to treatment for his mental condition.

185 Discharge and amendment of probation orders

- (1) The provisions of Schedule 5 to this Act shall have effect in relation to the discharge and amendment of probation orders.
- (2) Where, under section 186 of this Act, a probationer is sentenced for the offence for which he was placed on probation, the probation order shall cease to have effect.

186 Failure to comply with requirement of probation order

- (1) If, on information on oath from the officer supervising the probationer, it appears to the court by which the order was made or to the appropriate court that the probationer has failed to comply with any of the requirements of the order, that court may issue a warrant for the arrest of the probationer, or may, if it thinks fit, instead of issuing such a warrant in the first instance, issue a citation requiring the probationer to appear before the court at such time as may be specified in the citation.
- (2) If it is proved to the satisfaction of the court before which a probationer appears or is brought in pursuance of the last foregoing subsection that he has failed to comply with any of the requirements of the probation order, the court may—
 - (a) without prejudice to the continuance in force of the probation order, impose a fine not exceeding £20; or
 - (b)
 - (i) where the probationer has been convicted for the offence for which the order was made, sentence him for that offence;
 - (ii) where the probationer has not been so convicted, convict him and sentence him as aforesaid; or
 - (c) vary any of the requirements of the probation order, so however that any extension of the probation period shall terminate not later than three years from the date of the probation order.
- (3) A fine imposed under this section in respect of a failure to comply with the requirements of a probation order shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by or in respect of a conviction or a penalty imposed on a person summarily convicted.
- (4) A probationer who is required by a probation order to submit to treatment for his mental condition shall not be deemed for the purpose of this section to have failed to comply with that requirement on the ground only that he has refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances.
- (5) Without prejudice to the provisions of section 187 of this Act, a probationer who is convicted of an offence committed during the probation period shall not on that account be liable to be dealt with under this section for failing to comply with any requirement of the probation order.

187 Commission of further offence

- (1) If it appears to the court by which a probation order has been made (or to the appropriate court) that the probationer to whom the order relates has been convicted by a court in any part of Great Britain of an offence committed during the probation period and has been dealt with for that offence, the first-mentioned court (or the appropriate court) may issue a warrant for the arrest of the probationer, or may, if it thinks fit, instead of issuing such a warrant in the first instance issue a citation requiring the probationer to appear before that court at such time as may be specified in the citation, and on his appearance or on his being brought before the court, the court may, if it thinks fit, deal with him under section 186(2)(b) of this Act.
- (2) Where a probationer is convicted by the court which made the probation order (or by the appropriate court) of an offence committed during the probation period, that court may, if it thinks fit, deal with him under section 186(2)(b) of this Act for the offence

for which the order was made as well as for the offence committed during the period of probation.

188 Probation orders relating to persons residing in England

- (1) Where the court by which a probation order is made under section 183 of this Act is satisfied that the offender has attained the age of 17 years and resides or will reside in England, subsection (2) of the said section shall not apply to the order, but the order shall contain a requirement that he be under the supervision of a probation officer appointed for or assigned to the petty sessions area in which the offender resides or will reside ; and that area shall be named in the order.
- (2) Where a probation order has been made under section 183 of this Act and the court in Scotland by which the order was made or the appropriate court is satisfied that the probationer has attained the age of 17 years and proposes to reside or is residing in England, the power of that court to amend the order under Schedule 5 to this Act shall include power to insert the provisions required by subsection (1) of this section; and the court may so amend the order without summoning the probationer and without his consent.
- (3) A probation order made or amended by virtue of this section may, notwithstanding section 184(8) of this Act, include a requirement that the probationer shall submit to treatment for his mental condition, and—
 - (a) subsections (1), (3) and (7) of the said section 184 and section 3(2) of the Powers of Criminal Courts Act 1973 (all of which regulate the making of probation orders which include any such requirement) shall apply to the making of an order which includes any such requirement by virtue of this subsection as they apply to the making of an order which includes any such requirement by virtue of section 184 of this Act and section 3 of the said Act of 1973 respectively; and
 - (b) subsections (4) to (6) of section 3 of the said Act of 1973 (functions of supervising officer and medical practitioner where such a requirement has been imposed) shall apply in relation to a probationer who is undergoing treatment in England in pursuance of a requirement imposed by virtue of this subsection as they apply in relation to a probationer undergoing such treatment in pursuance of a requirement imposed by virtue of that section.
- (4) Sections 185(1) and 186(1) of this Act shall not apply to any order made or amended under this section; but subject as hereinafter provided the provisions of the Powers of Criminal Courts Act 1973 (except section 8 of that Act) shall apply to the order as if it were a probation order made under section 2 of that Act:

Provided that section 6(2)(a), (3)(d) and (6) of that Act shall not apply to any such order and section 6(4) and (5) of that Act shall have effect respectively in relation to any such order as if for the first reference in section 6(4) to the Crown Court there were substituted a reference to a court in Scotland and as if for the second such reference therein and for both such references in section 6(5) there were substituted references to the court in Scotland by which the probation order was made or amended under this section.

- (5) If it appears on information to a justice acting for the petty sessions area for which the supervising court within the meaning of the Powers of Criminal Courts Act 1973 acts that a person in whose case a probation order has been made or amended under this section has been convicted by a court in any part of Great Britain of an offence

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committed during the period specified in the order, he may issue a summons requiring that person to appear, at the place and time specified therein, before the court in Scotland by which the probation order was made or, if the information is in writing and on oath, may issue a warrant for his arrest, directing that person to be brought before the last-mentioned court.

- (6) If a warrant for the arrest of a probationer issued under section 187 of this Act by a court is executed in England, and the probationer cannot forthwith be brought before that court, the warrant shall have effect as if it directed him to be brought before a magistrates' court for the place where he is arrested; and the magistrates' court shall commit him to custody or release him on bail (with or without sureties) until he can be brought or appear before the court in Scotland.
- (7) The court by which a probation order is made or amended in accordance with the provisions of this section shall send three copies of the order to the clerk to the justices for the petty sessions area named therein, together with such documents and information relating to the case as it considers likely to be of assistance to the court acting for that petty sessions area.
- (8) Where a probation order which is amended under subsection (2) of this section is an order to which the provisions of this Act apply by virtue of section 10 of the Powers of Criminal Courts Act 1973 (which relates to probation orders under that Act relating to persons residing in Scotland) then, notwithstanding anything in that section or this section, the order shall, as from the date of the amendment, have effect in all respects as if it were an order made under section 2 of that Act in the case of a person residing in England.

189 Further provisions as to probation orders

- (1) Where the court by which a probation order is made under section 183 of this Act or subsection (6) of this section is satisfied that the person to whom the order relates is under the age of 17 years and resides or will reside in England, subsection (2) of the said section 183 shall not apply to the order but the order shall name the petty sessions area in which that person resides or will reside and the court shall send notification of the order to the clerk to the justices for that area.
- (2) Where a probation order has been made under section 183 of this Act or subsection (6) of this section and the court which made the order or the appropriate court is satisfied that the person to whom the order relates is under the age of 17 years and proposes to reside or is residing in England, the power of that court to amend the order under Schedule 5 to this Act shall include power, without summoning him and without his consent, to insert in the order the name of the petty sessions area aforesaid; and where the court exercises the power conferred on it by virtue of this subsection it shall send notification of the order to the clerk aforesaid.
- (3) A court which sends a notification to a clerk in pursuance of the foregoing provisions of this section shall send to him with it three copies of the probation order in question and such other documents and information relating to the case as it considers likely to be of assistance to the juvenile court mentioned in the following subsection.
- (4) It shall be the duty of the clerk to whom a notification is sent in pursuance of the foregoing provisions of this section to refer the notification to a juvenile court acting for the petty sessions area named in the order, and on such a reference the court—

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- (a) may make a supervision order under the Children and Young Persons Act 1969 in respect of a person to whom the notification relates; and
 - (b) if it does not make such an order, shall dismiss the case.
- (5) A supervision order made by virtue of the last foregoing subsection shall not include a requirement authorised by section 12 of the said Act of 1969 unless the supervised person is before the court when the supervision order is made, and in relation to a supervision order made by virtue of that subsection—
- (a) section 15 of that Act shall have effect as if, in subsection (4), paragraph (b) and the words following it were omitted; and
 - (b) section 17(a) of that Act shall have effect as if the second reference to the supervision order were a reference to the probation order in consequence of which the supervision order is made ;
- and when a juvenile court disposes of a case referred to it in pursuance of the last foregoing subsection, the probation order in consequence of which the reference was made shall cease to have effect.
- (6) The court which, in pursuance of subsection (1) of section 73 of the Social Work (Scotland) Act 1968, considers a case referred to it in consequence of a notification under paragraph (i) of that subsection (which relates to a case in which a person subject to a supervision order made by virtue of this section moves to Scotland)—
- (a) may, if it is of opinion that the person to whom the notification relates should continue to be under supervision, make a probation order in respect of him for a period specified in the order; and
 - (b) if it does not make such an order, shall dismiss the case;
- and when the court disposes of a case in pursuance of this subsection the supervision order aforesaid shall cease to have effect.
- (7) Notwithstanding any provision to the contrary in section 183 of this Act, a probation order made by virtue of the last foregoing subsection which includes only requirements having the like effect as any requirement or provision of the supervision order to which the notification relates may be made without summoning the person to whom the notification relates and without his consent, and shall specify a period of supervision which shall expire not later than the date on which that supervision order would have ceased to have effect by the effluxion of time ; and, except as aforesaid, the provisions of this Act shall apply to that probation order.
- (8) In this and the last foregoing section " petty sessions area " has the same meaning as in the said Act of 1969.

190 Supplementary provisions as to probation

- (1) Any court, on making a probation order, may, if it thinks that such a course is expedient for the purpose of the order, require the offender to give security for his good behaviour.
- (2) Security may be given under the foregoing subsection by consignation with the clerk of the court or by entering into an undertaking to pay the amount, but not otherwise, and such security may be forfeited and recovered in like manner as caution.

191 Effects of probation and absolute discharge

- (1) Subject as hereinafter provided, a conviction of an offence for which an order is made under this Part of this Act placing the offender on probation or discharging him absolutely shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of laying it before a court as a previous conviction in subsequent proceedings for another offence:

Provided that where an offender, being not less than 16 years of age at the time of his conviction of an offence for which he is placed on probation as aforesaid, is subsequently sentenced under this Act for that offence, the provisions of this subsection shall cease to apply to the conviction.

- (2) Without prejudice to the foregoing provisions of this section, the conviction of an offender who is placed on probation or discharged absolutely as aforesaid shall in any event be disregarded for the purposes of any enactment which imposes any disqualification or disability upon convicted persons, or authorises or requires the imposition of any such disqualification or disability.
- (3) The foregoing provisions of this section shall not affect—
- (a) any right of any such offender as aforesaid to appeal against his conviction ; or
 - (b) the operation, in relation to any such offender, of any enactment which was in force as at the commencement of section 9 (3)(b) of the Criminal Justice (Scotland) Act 1949 and is expressed to extend to persons dealt with under section 1(1) of the Probation of Offenders Act 1907 as well as to convicted persons.
- (4) Where a person charged with an offence has at any time previously been placed on probation or discharged absolutely in respect of the commission by him of an offence it shall be competent, in the proceedings for that offence, to bring before the court the probation order or order of absolute discharge in like manner as if the order were a conviction.

192 Probation reports

Where a report by an officer of a local authority is made to any court (other than a court whose procedure is regulated by rules made under section 366(2) of this Act) with a view to assisting the court in determining the most suitable method of dealing with any person in respect of an offence, a copy of the report shall be given by the clerk of the court to the offender or his solicitor:

Provided that if the offender is under 16 years of age and is not represented by counsel or a solicitor, a copy of the report need not be given to him but shall be given to his parent or guardian if present in court.

Penalties for statutory offences

193 Power to mitigate penalties

In proceedings in respect of the contravention of any statute or order, where each contravention involves any of the following punishments, namely, imprisonment, the imposition of a fine, the finding of caution for good behaviour or otherwise, either singly or in combination with imprisonment or fine, the court shall have in addition to any other powers conferred by Act of Parliament the following powers, viz.:—

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- (1) to reduce the period of imprisonment:
- (2) to substitute for imprisonment (either with or without caution for good behaviour, not exceeding an amount of £150 and a period of 12 months a fine as provided in the following table:—

<i>Period of imprisonment ...</i>	<i>Amount of fine.</i>
Not exceeding three months	Not exceeding £100.
Exceeding three months but not exceeding six months	Not exceeding £200.
Exceeding six months but not exceeding one year	Not exceeding £400.
Over one year	Such fine as the court may, in its discretion, decide

- (3) to substitute the finding of caution not exceeding the amount of £150 and the period of 12 months for a fine or imprisonment:
- (4) to reduce the amount of any fine:
- (5) to dispense with the finding of caution:

Provided that,

- (i) where any Act carries into effect a treaty, convention, or agreement with a foreign state, and such treaty, convention, or agreement stipulates for a fine of minimum amount, the court shall not be entitled by virtue of this section to reduce the amount of such fine below that minimum amount;
- (ii) this section shall not apply to proceedings taken under any Act relating to any of Her Majesty's regular or auxiliary forces.

Fines

194 Time for payment

The court may allow time for the payment of any fine, or for the finding of caution.

195 Payment by instalments

- (1) Where a court imposes a fine on a person convicted, the court may, either at the same or at any subsequent time, order payment of the fine by instalments of such amounts, and at such times, as it may think fit, and where any instalment is not paid at the time so ordered, that person shall be liable to imprisonment for such period as bears to the period specified in default of payment of the fine the same proportion, as nearly as may be, as the sum of the unpaid instalments bears to the total amount of the fine.
- (2) Where in pursuance of subsection (1) of this section a person is imprisoned in default of payment of any instalment of a fine, and there is paid to the governor of the prison in which the said person is imprisoned a sum in part satisfaction of the sum of the unpaid instalments of the said fine, the term of imprisonment of the said person shall be reduced by a number of days bearing as nearly as possible the same proportion to

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the total number of days for which he was sentenced as the sum so paid bears to the sum for which he is liable.

- (3) Where a court has imposed a fine on a person convicted and has ordered payment of the fine by instalments in accordance with the terms of subsection (1) of this section, the court may at any time before imprisonment has followed on the sentence, without requiring the attendance of the accused, reduce the amount, or allow further time for the payment, of any instalment (whether the time for payment thereof has or has not expired), or order payment of the fine, so far as unpaid, by instalments of smaller amounts or at longer intervals than originally ordered.
- (4) The High Court may by Act of Adjournal regulate the procedure to be followed in cases arising under this section.
- (5) Schedule 6 to this Act shall apply for the purposes of this section.

196 Fines, etc., may be enforced in other district

Any sentence or decree for any fine or expenses pronounced by any sheriff court may be enforced against the person or effects of any party against whom any such sentence or decree shall have been awarded in any other sheriff court district, as well as in the district where such sentence or decree is pronounced:

Provided that such sentence or decree, or an extract thereof, shall be first produced to and indorsed by the sheriff of such other district competent to have pronounced such sentence or decree in such other district.

197 Imprisonment in default of payment of fine

Where the accused is found liable to a fine, the court may, whether or not the enactment under which the fine is imposed provides any method for its recovery, ordain the accused to be imprisoned in the event of failure to pay the fine, either immediately or within such period as the court may fix; but such imprisonment shall not exceed the maximum period applicable to the fine under section 199 of this Act.

198 Substitution of custody for imprisonment where a child defaults on fine

Where a child would, if he were an adult, be liable to be imprisoned in default of payment of any fine, damages, or expenses, the court may, if it considers that none of the other methods by which the case may legally be dealt with is suitable, order that the child be detained for such period, not exceeding one month, as may be specified in the order in a place chosen by the local authority in whose area the court is situated.

199 Period of imprisonment for non-payment of fine

The maximum period of imprisonment that may be imposed in default of the payment of a fine imposed on conviction shall be as follows:—

<i>Amount of Fine</i>	<i>Period of Imprisonment</i>
Not exceeding £20	Three months.
Exceeding £20 but not exceeding £100	Four months.

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

<i>Amount of Fine</i>	<i>Period of Imprisonment</i>
Exceeding £100 but not exceeding £500	Six months.
Exceeding £500	Twelve months.

200 Discharge from imprisonment to be specified

All warrants of imprisonment for payment of a fine, or for finding of caution, shall specify a period at the expiry of which the person sentenced shall be discharged, notwithstanding such fine shall not have been paid, or caution found.

201 Payment of fine in part by prisoner

- (1) Where a person committed to prison or otherwise detained for failure to pay a fine imposed by a court of solemn jurisdiction pays to the governor of the prison, under conditions prescribed by rules made under the Prisons (Scotland) Act 1952, any sum in part satisfaction of the fine, the term of imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which the prisoner is sentenced as the sum so paid bears to the total amount of the fine.
- (2) In this section references to a prison and to the governor thereof shall include respectively references to any other place in which a person may be lawfully detained in default of payment of a fine, and to an officer in charge thereof.

202 Remission of fine where young offender detained

Where, in the case of an offender detained in a Borstal institution, detention centre or any place under an order made by virtue of section 206 or 413 of this Act, or under supervision following release therefrom, who has not made payment of a fine imposed before his being so detained, it appears to the Secretary of State that remission of the fine might assist the rehabilitation of the offender, he may, after consultation where practicable with the judge by whom or the presiding chairman of the court by which sentence was passed, remit that fine in whole or in part.

203 Fines payable to H.M. Exchequer

Any fine imposed in the High Court upon the accused, and upon a juror for non-attendance, and any forfeiture for nonappearance of a party, witness or juror in the High Court shall be payable to and recoverable by the proper officer in Exchequer for Her Majesty's use, unless in a case where the High Court shall, by the sentence awarding the said fine, order the same or any part thereof to be otherwise disposed of.

Borstal training

204 Borstal training

- (1) Where a person who is not less than 16 but under 21 years of age is convicted of an offence punishable with imprisonment, and the court is satisfied having regard to his character and previous conduct, and to the circumstances of the offence, that it is expedient for his reformation and the prevention of crime that he should undergo a

period of training in a Borstal institution, the court may, subject to subsection (5) of this section, pass a sentence of Borstal training in lieu of any other sentence.

- (2) Before a sentence of Borstal training is passed the court shall call for and consider a report on the offender's physical and mental condition and his suitability for such a sentence, which report it shall be the duty of the Secretary of State to cause to be furnished to the court.
- (3) If on consideration of a report furnished in pursuance of subsection (2) of this section the court, either *ex proprio motu* or on the application of either party, thinks it expedient to do so, it may require any person concerned in the preparation of the report or with knowledge of matters dealt with in the report to appear with a view to his examination on oath regarding any of the matters dealt with in the report, and such person may be examined or cross-examined accordingly.
- (4) A copy of any report furnished under subsection (2) of this section shall be given by the clerk of the court to the offender or his solicitor at least two clear days before the diet at which the sentence is to be passed.
- (5) The power of a court to pass a sentence of Borstal training under subsection (1) of this section shall not be exercised in the case of any person on whom such a sentence has previously been imposed and who has served any part thereof.

Imprisonment, etc.

205 Life imprisonment for murder

- (1) No person shall suffer death for murder, and a person convicted of murder shall, subject to section 206(1) of this Act, be sentenced to imprisonment for life.
- (2) On sentencing any person convicted of murder to imprisonment for life the High Court may at the same time declare the period which it recommends to the Secretary of State as the minimum period which in its view should elapse before the Secretary of State orders the release of that person on licence under section 61 of the Criminal Justice Act 1967.
- (3) For the purpose of any proceedings on or subsequent to a person's trial on a charge of capital murder, that charge and any plea or finding of guilty of capital murder shall be treated as being or having been a charge, or a plea or finding of guilty, of murder only; and if on 9th November 1965 a person was under sentence of death for murder, the sentence shall be treated as having been a sentence of imprisonment for life.

206 Punishment of person under 18

- (1) A person convicted of murder who appears to the court to have been under the age of 18 years at the time the murder was committed shall not be sentenced to imprisonment for life ; but in lieu thereof the court shall (notwithstanding anything in this or in any other Act) sentence him to be detained during Her Majesty's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the Secretary of State may direct.
- (2) Where a child is convicted and the court is of opinion that none of the other methods of dealing with the child is suitable, the court may sentence him to be detained for such period as may be specified in the sentence; and where such a sentence has been

passed, 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.

207 Restriction on imprisonment of person under 17

No court shall impose imprisonment on a person under 17 years of age.

208 Restriction on detention of person under 21

- (1) No court shall impose detention on a person under 21 years of age, unless the court is of opinion that no other method of dealing with him is appropriate.
- (2) For the purpose of determining in pursuance of the provisions of subsection (1) of this section whether any other method of dealing with a person mentioned therein is appropriate, the court shall obtain information about that person's circumstances from an officer of a local authority or otherwise and shall consider that information; and the court shall take into account any information before it which is relevant to his character and to his physical and mental condition.
- (3) Where in the case of a person who is of or over 16 years of age but less than 21 years of age the court is of opinion as aforesaid, and either—
 - (a) if the person has been convicted of an offence punishable with imprisonment, is satisfied, having considered all the circumstances of the case, that neither a sentence of Borstal training nor a sentence of detention in a detention centre should be imposed ; or
 - (b) would have power but for this section to impose imprisonment otherwise than by sentence ;it shall, subject to the provisions of this Act, instead of imposing a term of imprisonment upon him impose detention in a young offenders institution for a term not exceeding the term for which he could have been imprisoned.
- (4) For the purposes of any reference in this section to a term of imprisonment or to a term of detention in a young offenders institution, consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.

209 Detention in detention centre

- (1) Subject to the provisions of this section, in any case where a person who is not less than 16 but under 21 years of age is convicted of an offence punishable with imprisonment, and the court has been notified by the Secretary of State that a detention centre is available for the reception from that court of persons of his class or description, it may pass on him a sentence of detention in that centre for a fixed term of three months.
- (2) A court shall not pass a sentence under this section in the case of a person who has served or is serving a sentence involving his detention for two months or more in a prison or in a young offenders institution or a sentence of Borstal training, or in the case of a person who has served a sentence of detention in a detention centre, unless the court is of the opinion that, having regard to special considerations arising out of the circumstances of the case and the character of the offender, this method of dealing with him is the most appropriate.
- (3) Where it appears to the Secretary of State that a person detained in a detention centre is unfit for such detention by reason of his health, without prejudice to any other powers

he may have in the matter, he may, after consultation where practicable with the judge by whom or the presiding chairman of the court by which the sentence was passed, release that person; and he shall then be required to be under supervision in accordance with section 11(1) of the Criminal Justice (Scotland) Act 1963.

210 Term of detention in a detention centre

- (1) The term for which a person may be detained in a detention centre shall not exceed three months at a time; and accordingly no court may pronounce an order the effect of which would be that a person would be liable to be detained for more than that period.
- (2) Where a court has before it a person convicted of an offence punishable with imprisonment who is serving a sentence of detention in a detention centre or who has been sentenced to and has not yet started to serve such a sentence as aforesaid, it may pass either of the following sentences (subject to the requirements of any enactment relating to those sentences)—
 - (a) a sentence of detention in a young offenders institution, or, if the person is of or over 21 years of age, a sentence of imprisonment, for a period not exceeding the aggregate of the unexpired portion of the sentence of detention in a detention centre and the maximum period of detention in a young offenders institution or of imprisonment, as the case may be, which the court may impose for the offence of which it has convicted the person; or
 - (b) a sentence of Borstal training;and in that event the sentence of detention in a detention centre shall cease to have effect.

211 Recall to Borstal on re-conviction

- (1) Where a person sentenced to Borstal training, being under supervision after his release from a Borstal institution, is convicted of an offence punishable with imprisonment, the court may, instead of dealing with him in any other manner, make an order for his recall.
- (2) An order for the recall of a person made as aforesaid shall have the like effect as an order for recall made by the Secretary of State under section 33(4) of the Prisons (Scotland) Act 1952.

212 Recall to young offenders institution on re-conviction

- (1) Where a person sentenced to detention in a young offenders institution, being under supervision after his release from such an institution, is convicted of an offence punishable with imprisonment, the court may, instead of dealing with him in any other manner, make an order for his recall.
- (2) An order for the recall of a person made as aforesaid shall have the like effect as an order for recall made by the Secretary of State under section 12 of the Criminal Justice (Scotland) Act 1963.

213 Revocation of licence by court

- (1) If a person subject to a licence under section 60 or 61 of the Criminal Justice Act 1967 is convicted of an offence punishable on indictment with imprisonment, the court may, whether or not it passes any other sentence on him, revoke the licence.

- (2) The power conferred on a court by this section to revoke the licence of any person released under section 60 of the Criminal Justice Act 1967 after being transferred to either part of Great Britain from another part of the United Kingdom, the Channel Islands or the Isle of Man shall be exercisable notwithstanding anything in section 26(6) of the Criminal Justice Act 1961 (exclusion of supervision of persons so transferred).

214 Return to prison in case of breach of supervision

- (1) If, on sworn information laid by or on behalf of the Secretary of State, it appears to the sheriff that a person, being under supervision under Schedule 1 to the Criminal Justice (Scotland) Act 1963, has failed to comply with any of the requirements imposed on him by his notice of supervision, the sheriff may issue a warrant for the arrest of that person or may, if he thinks fit, instead of issuing such a warrant in the first instance, issue a citation requiring the person to appear before him at such time as may be specified in the citation.
- (2) If it is proved to the satisfaction of the sheriff before whom a person appears or is brought in pursuance of the last foregoing subsection that the person has failed to comply with any of the requirements of the notice of supervision, the sheriff shall, unless having regard to all the circumstances of the case, he considers it unnecessary or inexpedient to do so, order that he be sent back to prison for such term as may be specified in that order, not exceeding whichever is the shorter of the following, that is to say—
- (a) a period of three months;
 - (b) a period equal to so much of the period of 12 months referred to in paragraph 1 of Schedule 1(1) to the Criminal Justice (Scotland) Act 1963 as was unexpired on the date on which proceedings were commenced.
- (3) Subject to the following provisions of this section, Part II of this Act shall apply in relation to proceedings for an order as aforesaid as it applies in relation to proceedings in respect of a summary offence, and references in Part II of this Act to an offence, trial, conviction or sentence shall be construed accordingly.
- (4) Proceedings for an order under subsection (2) of this section may be brought before a sheriff having jurisdiction in the area in which the supervising officer carries out his duties.
- (5) A warrant issued for the purposes of proceedings for an order under subsection (2) above may, if the person laying the information so requests, bear an endorsement requiring any constable charged with its execution to communicate with the Secretary of State before arresting the person under supervision if the constable finds that that person is earning an honest livelihood or that there are other circumstances which ought to be brought to the notice of the Secretary of State.
- (6) Where a person while under supervision under Schedule 1 to the Criminal Justice (Scotland) Act 1963 is convicted of an offence for which the court has power to pass sentence of imprisonment, the court may, instead of dealing with him in any other manner, make such an order as could be made by a sheriff under subsection (2) of this section in proceedings for such an order.
- (7) The Secretary of State may at any time release from prison a person who has been sent back to prison under subsection (2) or (6) of this section; and the provisions of

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

this section and of the said Schedule shall apply to a person released by virtue of this subsection, subject to the following modifications :—

- (a) that the period of twelve months referred to in paragraph 1 of the said Schedule shall be calculated from the date of his original release ; and
 - (b) in relation to any further order for sending him back to prison under this section, the period referred to in subsection (2)(a) of this section shall be reduced by any time during which he has been detained by virtue of the previous order.
- (8) In any proceedings, a certificate purporting to be signed by or on behalf of the Secretary of State and certifying—
- (a) that a notice of supervision was given to any person in the terms specified in the certificate and on the date so specified; and
 - (b) either that no notice has been given to him under para graph 3 of the said Schedule or that a notice has been so given in the terms specified in the certificate,
- shall be sufficient evidence of the matters so certified ; and the fact that a notice of supervision was given to any person shall be sufficient evidence that he was a person to whom section 14 of the Criminal Justice (Scotland) Act 1963 applies.
- (9) For the purposes of Part III of the Criminal Justice Act 1961, a person who has been sent back to prison under subsection (2) or (6) of this section, and has not been released again, shall be deemed to be serving part of his original sentence, whether or not the term of that sentence has in fact expired.

215 Legal custody

Any person required or authorised by or under this Act to be taken to any place or to be kept in custody shall, while being so taken or kept, be deemed to be in legal custody.

Miscellaneous provisions as to conviction, sentence, etc.

216 Art and part guilt of statutory offence

A person may be convicted of, and punished for, a contravention of any statute or order, notwithstanding that he was guilty of such contravention as art and part only.

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 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.

218 Consideration of time spent in custody

A court, in passing a sentence of imprisonment or detention in a young offenders institution as defined in section 31(1)(d) of the Prisons (Scotland) Act 1952 on a person for any offence, shall, 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.

219 Deferred sentence

It shall be competent for a court to defer sentence after conviction for a period and on such conditions as the court may determine.

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 two 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.

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.

223 Forfeiture of property

- (1) Where a person is convicted of an offence and the court which passes sentence is satisfied that any property which was in his possession or under his control at the time of his apprehension—
- (a) has been used for the purpose of committing, or facilitating the commission of, any offence ; or
 - (b) was intended by him to be used for that purpose,

that property shall be liable to forfeiture, and any property forfeited under this section shall be disposed of as the court may direct.

- (2) 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.

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.

225 Interlocutors to be signed by clerk

In the High Court, interlocutors shall be distinctly minuted or entered in the record, and that entry shall be signed by the clerk.

226 Record copies to be inserted in books of adjournal of High Court

The record copies of indictments brought before the High Court, and the record copies of all printed proceedings in the said court, shall be inserted in the books of adjournal, either at their proper place in the body of such books, or at the end of the volume wherein the relative procedure is recorded, in which case they shall be distinctly referred to as so appended; and the books of adjournal so made up and completed shall be and be taken to be and be used as the books of adjournal of the said court.

227 Indictment to be inserted in record book in sheriff court

When an indictment in any sheriff court is either wholly or partly printed, a copy of it, either wholly or partly printed, shall be inserted in the record book of court, either in its proper place in the body thereof or at the end of the volume wherein the relative procedure is recorded, in which last case it shall be distinctly referred to as so appended.

APPEAL

Procedure prior to hearing

228 Right of appeal

A person convicted may appeal under this Part of this Act to the High Court—

- (a) against his conviction on any ground of appeal which involves a question of law alone ;
- (b) with the leave of the High Court or upon the certificate of the judge who presided at the trial that it is a fit case for appeal, against his conviction on any ground of appeal which involves a question of fact alone or a question of

mixed law and fact or on any other ground which appears to the High Court or to the judge to be a sufficient ground of appeal;

- (c) with the leave of the High Court, against the sentence passed on his conviction unless the sentence is one fixed by law:

Provided that a person sentenced to preventive detention within the meaning of section 21 of the Criminal Justice (Scotland) Act 1949 may appeal to the High Court against such sentence without such leave.

229 Certificate by judge that case appealable

- (1) The certificate of the judge who presided at the trial that a case is a fit case for appeal shall be in the form set out in an Act of Adjournal under the Criminal Appeal (Scotland) Act 1926 or under this Act or as nearly as may be in such form.
- (2) The trial judge may, in any case in which he considers it desirable to do so, inform the person convicted before him or sentenced by him that the case is, in his opinion, one fit for an appeal to the High Court under section 228(b) of this Act, and may give to such person a certificate to that effect.

230 Bill of suspension not competent

It shall not be competent to appeal to the High Court by bill of suspension against any conviction, sentence, judgment or order pronounced in any proceedings on indictment in the sheriff court.

231 Time for appealing

Where a person convicted desires to appeal under this Part of this Act to the High Court or to obtain the leave of the High Court to appeal, he shall within ten days of the date of his conviction in the case of appeal or application for leave to appeal against conviction, or within ten days of the date of his sentence in the case of appeal or application for leave to appeal against sentence, give notice of appeal or of application for leave to appeal. The time within which notice of appeal or of application for leave to appeal may be given may be extended at any time by the High Court.

232 Calculating days of appeal, etc.

In calculating the period of days in appeals and other applications under this Part of this Act, Sundays and public holidays shall not be included.

233 Forms for appeal

- (1) A note of—
 - (a) appeal against conviction or sentence ;
 - (b) application for leave to appeal against conviction or sentence; and
 - (c) application for extension of time within which, under this Part of this Act, a note of appeal or application for leave to appeal shall be given,

shall be wholly or partly written, typed, or printed, and shall be signed by the appellant or applicant or his counsel or agent and shall be in the form set out in an Act of Adjournal under the Criminal Appeal (Scotland) Act 1926 or under this Act or as nearly as may be in such form.

- (2) Any such note shall, save as is hereinafter provided, be lodged with the Clerk of Justiciary within the prescribed period, and the appellant or applicant shall immediately after lodging the said note send a copy of it to the Crown Agent and, where the conviction or sentence was in the sheriff court, to the appropriate sheriff clerk.
- (3) Where, on the trial of a person entitled to appeal or make application for leave to appeal under this Part of this Act, a plea of insanity in bar of conviction has not been affirmed by the jury, any note required by this Part of this Act to be signed by the appellant or applicant himself may be signed by his counsel or agent, or other person authorised to act on his behalf, and may be lodged with the Clerk of Justiciary by such agent or other person authorised as aforesaid.
- (4) On an appeal being lodged and on an application for leave to appeal being granted, the Clerk of Justiciary shall give notice to the Prison Commissioners for Scotland.
- (5) Where the High Court has, on a note of application for leave to appeal, given an applicant leave to appeal, it shall not be necessary for such applicant to lodge any note of appeal, but the note of application for leave to appeal shall in such case be deemed to be a note of appeal.

234 Presentation of appeal in writing

- (1) If an appellant or an applicant for leave to appeal desires to present his case and his argument in writing instead of orally he shall intimate this desire to the Clerk of Justiciary at least four days before the diet fixed for the hearing of the appeal or application for leave to appeal, and, at the same time, shall lodge with the Clerk of Justiciary three copies of his case and argument; at the same time, he shall also send a copy thereof to the Crown Agent. Any case or argument so presented shall be considered by the High Court.
- (2) Unless the High Court shall otherwise direct, the respondent, in a case to which this section applies, shall not make a written reply to the case and argument in writing, but shall reply orally thereto at the diet fixed for the hearing of the appeal or application for leave to appeal.
- (3) Unless the High Court shall otherwise allow, an appellant or an applicant for leave to appeal who has presented his case and argument in writing shall not be entitled to submit in addition an oral argument to the court in support of the appeal or application for leave to appeal.

235 Applications may be made orally or in writing

Except where otherwise provided in this Part of this Act, any application to the High Court may be made by the appellant or respondent as the case may be or by counsel on his behalf, orally or in writing, but in regard to such applications if the appellant is unrepresented and is in custody and is not entitled or has not obtained leave to be present before the court, he shall make any such application by forwarding the same in writing to the Clerk of Justiciary who shall take the proper steps to obtain the decision of the court thereon.

236 Proceedings in sheriff court to be furnished

In the case of an appeal or application for leave to appeal against a conviction or sentence in a sheriff court, the sheriff clerk shall furnish to the Clerk of Justiciary a certified copy of the proceedings at the trial, or shall forward to him the original record of the proceedings, as may be required by the Clerk of Justiciary.

237 Judge's notes and report to be furnished

- (1) Where a person convicted appeals or applies for leave to appeal under this Part of this Act against the conviction or sentence, the judge who presided at the trial shall furnish to the Clerk of Justiciary in the manner provided in this section, his notes of the proceedings before him, and a report giving his opinion on the case or on any point arising therein.
- (2) The Clerk of Justiciary when he has received such a note as is referred to in section 233(1) of this Act or when the Secretary of State shall exercise his powers under section 263(1) of this Act, shall request the judge who presided at the trial to furnish him with a copy of his notes of the proceedings at the trial, certified by him, and the judge shall comply with such request. The High Court or any judge thereof, if they or he sees fit, may order the said notes to be printed or typed for the use of the court and the parties.
- (3) When the Clerk of Justiciary has received such a note as is referred to in section 233(1) of this Act or when the Secretary of State shall exercise his powers under section 263(1) of this Act, he shall request the judge who presided at the trial to furnish him with a report in writing, giving his opinion upon the case generally, or upon any point arising upon the case of the appellant or applicant, and the judge shall comply with such request. When making a request for such report the Clerk of Justiciary shall send to the judge a copy of the note he has received or any other document or information which he shall consider material or which the High Court at any time shall direct him to send or with which such judge may request to be furnished, to enable such judge to deal in his report with the appellant's or applicant's case generally or with any point arising thereon.
- (4) The report of the judge shall be made to the High Court, and, except by leave of the High Court or a judge thereof, the Clerk of Justiciary shall not furnish to any person any part thereof.

238 Admission of appellant to bail

- (1) The High Court may, if it seems fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.
- (2) An appellant who is admitted to bail shall, unless the High Court otherwise directs, appear personally in court on the day or days fixed for the hearing of his appeal or application for leave to appeal. In the event of the appellant failing so to appear, the court may decline to consider the appeal or application, and may dismiss it summarily or may consider and determine it or make such other order as it thinks fit.

239 Notice to appellant of date of hearing

- (1) When the High Court fixes the date for the hearing of an appeal, or of an application for leave to appeal or for extension of time for lodging notes of appeal or of application for

leave to appeal which it is proposed to dispose of by the court, the Clerk of Justiciary shall give notice to the Crown Agent and to the solicitor of the appellant or applicant, or to the appellant or applicant himself if he has no known solicitor, and the latter shall thereupon lodge three copies (typed or printed) of the said appeal or application for the use of the court.

- (2) Where it is proposed that the powers of the court shall be exercised by a single judge under the provisions of section 247 of this Act, one copy only of the application to be disposed of shall be lodged by the solicitor of the applicant for the use of the judge.

240 Appellant may be present at hearing

An appellant, notwithstanding that he is in custody, shall be entitled to be present if he desires it, on the hearing of his appeal, except where the appeal is on some ground involving a question of law alone, but, in that case and on an application for leave to appeal and on any proceedings preliminary or incidental to an appeal, shall not be entitled to be present, except where it is provided by Act of Adjournal that he shall have the right to be present, or where the High Court gives him leave to be present

241 Notice to authorities, etc., of date of hearing

Where an appellant or applicant is in custody and has obtained leave or is entitled to be present at the hearing of his appeal or application, the Clerk of Justiciary shall notify the appellant or applicant, the Governor of the prison in which the appellant or applicant then is, and the Prison Commissioners for Scotland of the probable day on which the appeal or application will be heard. The Prison Commissioners for Scotland shall take steps to transfer the appellant or applicant to a prison convenient for his appearance before the High Court, at such reasonable time before the hearing as shall enable him to consult his legal adviser, if any.

242 Notice to Prison Commissioners of attendance of appellant at hearing

When an appellant or applicant is entitled, or has been granted leave to be present at any diet—

- (a) before the High Court or any judge thereof, or
- (b) for the taking of additional evidence before a person appointed for the purpose under section 252(b) of this Act, or
- (c) for an examination or investigation by a special commissioner in terms of section 252(d) of this Act,

the Clerk of Justiciary shall give timeous notice to the Prison Commissioners for Scotland, in the form set out in an Act of Adjournal under the Criminal Appeal (Scotland) Act 1926 or under this Act or as nearly as may be in such form, which notice shall be sufficient warrant to the said Commissioners for transmitting the appellant or applicant in custody from prison to the place where said diet or any subsequent diets are to be held and for reconveying him to prison at the conclusion of the said diet and any subsequent diets. The appellant or applicant shall appear at all such diets in ordinary civilian clothes.

243 Warders to attend court

The Prison Commissioners for Scotland shall, on notice under the last foregoing section from the Clerk of Justiciary, cause from time to time such sufficient number

of male and female warders to attend the sittings of the court as, having regard to the list of appeals thereat, they shall consider necessary.

244 Abandonment of appeal

An appellant or applicant, at any time after he has lodged such a note as is referred to in section 233(1) of this Act, may abandon his appeal or application by lodging with the Clerk of Justiciary notice of abandonment thereof, which shall be in the form set out in an Act of Adjournal under the Criminal Appeal (Scotland) Act 1926 or under this Act or as nearly as may be in such form, and on such notice being lodged the appeal or application shall be deemed to have been dismissed by the court.

Procedure at hearing

245 Quorum and sitting of High Court

- (1) For the purpose of hearing and determining any appeal or other proceeding under this Part of this Act three of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and the determination of any question under this Part of this Act by the court shall be according to the votes of the majority of the members of the court sitting, including the presiding judge, and each judge so sitting shall be entitled to pronounce a separate opinion.
- (2) The High Court shall hold both during session and during vacation such sittings for the disposal of appeals and other proceedings under this Part of this Act as may be necessary.
- (3) The provisions of this section shall apply to cases certified to the High Court by a single judge of the said court and to appeals by way of advocacion from the sheriff court in like manner as they apply to appeals under this Part of this Act.

246 Sittings to be arranged by Lord Justice General

Sittings of the High Court (including sittings in Court of Session vacation and sittings of a judge of the court under section 247 of this Act) shall be arranged to be held as may from time to time be directed by the Lord Justice General, whom failing by the Lord Justice Clerk.

247 Powers which may be exercised by a single judge

The powers of the High Court under this Part of this Act to give leave to appeal, to extend the time within which notice of appeal or of an application for leave to appeal may be given, to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave, and to admit an appellant to bail, may be exercised by any judge of the High Court in the same manner as they may be exercised by the High Court, and subject to the same provisions; but, if the judge refuses an application on the part of the appellant to exercise any such power in his favour, the appellant shall be entitled to have the application determined by the High Court.

248 Single judge may act wherever convenient

A judge of the High Court sitting under the provisions of section 247 of this Act may sit and act wherever convenient.

249 Interlocutory proceedings

Subject to the provisions of section 247 of this Act and without prejudice thereto, preliminary and interlocutory proceedings incidental to any appeal or application may be disposed of by a single judge.

250 Representation before single judge

In all proceedings before a judge under section 247 of this Act, and in all preliminary and interlocutory proceedings and applications except such as are heard before the full court, the parties thereto may be represented and appear by a solicitor alone.

251 Appeal against refusal of application

- (1) When an application or applications have been dealt with by a judge of the High Court, under section 247 of this Act, the Clerk of Justiciary shall notify to the applicant the decision in the form set out in an Act of Adjournal under the Criminal Appeal (Scotland) Act 1926 or under this Act or as nearly as may be in such form.
- (2) In the event of such judge refusing all or any of such applications, the Clerk of Justiciary on notifying such refusal to the applicant shall forward to him the prescribed form to fill up and forthwith return if he desires to have his said application or applications determined by the High Court as fully constituted for the hearing of appeals under this Part of this Act. If the applicant does not so desire, or does not return within five days to the Clerk the form duly filled up by him, the refusal of his application or applications by such judge shall be final.
- (3) If the applicant desires a determination by the High Court as aforesaid and is not legally represented, he may be present at the hearing and determination by the High Court of his said application:

Provided that an applicant who is legally represented shall not be entitled to be present without leave of the court.
- (4) When an applicant duly fills up and returns to the Clerk of Justiciary within the prescribed time the said form expressing a desire to be present at the hearing and determination by the court of the applications mentioned in this section, the said form shall be deemed to be an application by the applicant for leave to be so present, and the Clerk of Justiciary, on receiving the said form, shall take the necessary steps for placing the said application before the court.
- (5) If the said application to be present is refused by the court, the Clerk of Justiciary shall notify the applicant; and if the said application is granted, he shall notify the applicant and the Governor of the prison wherein the applicant is in custody and the Prison Commissioners for Scotland.
- (6) For the purpose of constituting a Court of Appeal, the judge who has refused any such application may sit as a member of such court, and take part in determining such application.

252 Supplemental powers of High Court

For the purposes of this Part of this Act the High Court may, if they think it necessary or expedient in the interest of justice—

- (a) order the production of any document, or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case;
- (b) if they think fit, order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the High Court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by section 253(1) of this Act before any judge of the High Court or other person appointed by the High Court for the purpose, and allow the admission of any depositions so taken as evidence before the High Court;
- (c) if they think fit, receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness, and, if the appellant makes an application for the purpose, of the husband or wife of the appellant, in cases where the evidence of the husband or wife could not have been given at the trial except on such an application;
- (d) where any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the High Court conveniently be conducted before the court, order the reference of the question in manner provided by section 253(2) of this Act for inquiry and report to a special commissioner appointed by the court, and act upon the report of any such commissioner so far as they think fit to adopt it;
- (e) appoint any person with special expert knowledge to act as assessor to the High Court in any case where it appears to the court that such special knowledge is required for the proper determination of the case;

and exercise in relation to the proceedings under this Part of this Act any other powers vested in the High Court, and issue any warrants necessary for enforcing the orders or sentences of the High Court:

Provided that in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial.

253 Evidence in court or on commission

- (1) The evidence of any witnesses ordered to be examined before the High Court or before any judge of the High Court or other person appointed by the High Court shall be taken in accordance with the existing law and practice as to the taking of evidence in criminal trials in Scotland. The appellant or applicant and the respondent or counsel on their behalf shall be entitled to be present at and take part in any examination of any witness to which this section relates.
- (2) When an order of reference is made by the High Court under section 252(d) of this Act, the question to be referred and the person to whom as special commissioner the same shall be referred shall be specified in such order. The court may in such order, or by giving directions as and when they from time to time shall think right, specify whether the appellant or respondent or any person on their behalf may be present at any examination or investigation or at any stage thereof as may be ordered under the said section 252(d), and specify any and what powers of the court may be delegated to such special commissioner, and may require him from time to time to make interim reports

to the court upon the question referred to him, and may, if the appellant is in custody, give leave to him to be present at any stage of such examination or investigation, and may give directions to the Clerk of Justiciary that any report made by such special commissioner shall be made available to the appellant and respondent or to counsel or agent on their behalf, and that they shall be entitled to have copies thereof made if they so desire.

254 Determination of appeals

- (1) The High Court on an appeal against conviction shall allow the appeal if they think—
 - (a) that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or
 - (b) that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law, or
 - (c) that on any ground there was a miscarriage of justice,and in any other case shall dismiss the appeal:

Provided that the court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred.

- (2) Subject to the special provisions of this Part of this Act the High Court shall, if they allow an appeal against conviction, quash the conviction.
- (3) On any appeal against conviction the High Court shall have the like power to quash the sentence passed and to pass another sentence as is conferred on the High Court by subsection (4) of this section in the case of an appeal against sentence.
- (4) On any appeal against sentence the High Court shall, if they think that a different sentence should have been passed, quash the sentence passed and pass such other sentence warranted in law (whether more or less severe) in substitution therefor as they think ought to have been passed, and in any other case shall dismiss the appeal.

255 Substitution of verdict

- (1) If it appears to the High Court that an appellant, though not properly convicted on some charge or part of the indictment, has been properly convicted on some other charge or part of the indictment, the High Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty on such other charge or part of the indictment, and may either affirm the sentence passed on the appellant at the trial or pass such sentence in substitution therefor as they think proper, and as may be warranted in law by the verdict so substituted.
- (2) Where an appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the High Court that the jury must have been satisfied of facts which proved him guilty of that other offence, the court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence.
- (3) If on any appeal it appears to the High Court that the appellant committed the act charged against him but that he was insane at the time of committing the same, the court may substitute for the verdict found by the jury a verdict of acquittal on the

ground of insanity, and may quash the sentence passed at the trial and make such order for the detention of the appellant as may be made under section 174 of this Act in the case of a person acquitted by a jury on the ground of insanity.

- (4) An order for the detention of a person in a hospital under this section shall have the like effect as a hospital order together with an order restricting his discharge, made without limitation of time ; and where such an order is given in respect of a person while he is in hospital, he shall be deemed to be admitted in pursuance of, and on the date of, the order.

256 Frivolous appeals

If on any notice of appeal against a conviction purporting to be on a ground of appeal which involves a question of law alone it appears to the High Court that the appeal is frivolous or vexatious, and that it can be determined without adjourning it for a full hearing, they may dismiss the appeal summarily, without calling on any persons to attend the hearing or to appear for the Crown thereon.

257 Failure to appear at hearing

Where no appearance is made by or on behalf of an appellant or applicant at the diet appointed for the hearing of an appeal or application for leave to appeal and where no case or argument in writing has been timeously lodged, the High Court shall dispose of the appeal or application for leave to appeal as if it had been abandoned.

258 Appellant may be sentenced in absence

The power of the High Court to pass any sentence under this Part of this Act may be exercised notwithstanding that the appellant is for any reason not present.

259 Continuation of hearing

The High Court or any single judge exercising the powers of the High Court under section 247 of this Act may continue the hearing of any appeal or application to a date, fixed or not fixed, and any judge of the High Court, or other person appointed by the court to take additional evidence, may fix any diet of proof necessary for that purpose.

260 Notice of decision of court on application

When the High Court has heard and dealt with any application under this Part of this Act, the Clerk of Justiciary shall (unless it appears to him unnecessary so to do) give to the applicant (if he is in custody and has not been present at the hearing of such application) notice of the decision of the court in relation to the said application.

261 Notice of determination of appeal

On the final determination of any appeal under this Part of this Act or of any matter under section 247 of this Act, the Clerk of Justiciary shall give notice of such determination to the appellant or applicant if he is in custody and has not been present at such final determination, to the clerk of the court in which the conviction took place, and to the Prison Commissioners for Scotland.

262 Finality of proceedings

Subject to the provisions of the next following section of this Act, all interlocutors and sentences pronounced by the High Court under this Part of this Act shall be final and conclusive and not subject to review by any court whatsoever and it shall be incompetent to stay or suspend any execution or diligence issuing from the High Court under this Part of this Act.

*Further provisions as to appeals***263 Prerogative of mercy**

- (1) Nothing in this Part of this Act shall affect the prerogative of mercy, but the Secretary of State on the consideration of any conviction of a person or the sentence (other than sentence of death) passed on a person who has been convicted, may, if he thinks fit, at any time, and whether or not an appeal or an application for leave to appeal against such conviction or sentence has previously been heard and determined by the High Court, either—
 - (a) refer the whole case to the High Court and the case shall then be heard and determined by the High Court as in the case of an appeal under this Part of this Act; or
 - (b) if he desires the assistance of the High Court on any point arising in the case refer that point to the court for their opinion thereon, and the court shall consider the point so referred and furnish the Secretary of State with their opinion thereon accordingly.
- (2) The power of the Secretary of State under this section to refer to the High Court the case, or any point arising on the case, of a person convicted shall be exercisable whether or not that person has petitioned for the exercise of Her Majesty's mercy.

264 Disqualification, forfeiture, etc.

- (1) Where, upon conviction of any person, any disqualification, forfeiture or disability attaches to such person by reason of such conviction, such disqualification, forfeiture or disability shall not attach for the period of ten days from the date of the verdict against such person nor, in the event of a note of appeal or of application for leave to appeal being lodged under this Part of this Act, until the determination thereof.
- (2) Where, upon a conviction, any property, matters or things which are the subject of the prosecution or connected therewith are to be or may be ordered to be destroyed or forfeited, the destruction or forfeiture or the operation of any order for destruction or forfeiture thereof shall be suspended for the period of ten days after the date of the verdict in the trial, and, in the event of a note of appeal or of application for leave to appeal being lodged under this Part of this Act, shall be further suspended until the determination thereof.

265 Fines and caution

- (1) Where a person has on conviction been sentenced to payment of a fine and in default of payment to imprisonment, the person lawfully authorised to receive such fine shall, on receiving the same, retain it until the determination of any appeal in relation thereto.

- (2) If a person sentenced to payment of a fine remains in custody in default of payment of the fine he shall be deemed, for the purposes of this Part of this Act, to be a person sentenced to imprisonment.
- (3) Where a person has on conviction been sentenced to payment of a fine and in default of such payment to imprisonment, and he intimates to the judge who presided at the trial that he is desirous of appealing against his conviction to the High Court, either upon grounds of law alone, or with the certificate of the said judge upon any grounds mentioned in section 228(b) of this Act, the judge may, by order entered on the record, appoint such person forthwith to find caution for such sum as the judge may think right, to prosecute his appeal; and, subject thereto, may also so order that payment of the said fine shall be made at the final determination of the appeal, if the same be dismissed, to the clerk of the court in which the conviction took place or otherwise as the High Court may then order.
- (4) An appellant who has been sentenced to the payment of a fine, and has paid the same in accordance with such sentence, shall, in the event of his appeal being successful, be entitled, subject to any order of the High Court, to the return of the sum or any part thereof so paid by him.
- (5) If an appellant to whom subsection (3) of this section applies does not pay the fine or lodge a note of appeal upon grounds of law alone, or with the certificate of the judge who presided at the trial upon any grounds mentioned in section 228(6) of this Act, within ten days from the date of his conviction and sentence, the Clerk of Justiciary shall report such omission to the High Court or any judge thereof who, after such notice as they or he may deem advisable, may find that the aforesaid caution has been forfeited, and may pronounce against the cautioner decree for such sum as they or he may think proper and may issue a warrant for the apprehension of the appellant and may commit him to prison in default of payment of his fine, or may make such other order as they or he may think right.

266 Expenses

On the hearing and determination of an appeal or any proceedings preliminary or incidental thereto under this Part of this Act no expenses shall be allowed on either side.

267 No fees exigible

Save in so far as provided in this Part of this Act, no court fees, or other fees or expenses shall be exigible from or awarded against an appellant or applicant in respect of an appeal or application under any of the provisions contained in sections 228 to 279 of this Act.

268 Reckoning of time spent pending appeal

- (1) The time during which an appellant, after admission to bail under section 238 of this Act, is at large pending the determination of his appeal shall not be reckoned as part of any term of imprisonment under his sentence.
- (2) The time during which an appellant is in custody pending the determination of his appeal shall, subject to any direction which the High Court may give to the contrary, be reckoned as part of any term of imprisonment under his sentence.

- (3) Imprisonment of an appellant shall, subject to any direction which the High Court may give to the contrary, be deemed to run, if the appellant is in custody, as from the date on which the sentence was passed, and to begin to run or to be resumed, if the appellant is not in custody, as from the date on which he is received into prison under the sentence.
- (4) In this section references to a prison and imprisonment shall include respectively references to a Borstal institution, detention centre or place of safety and to detention in such institution, centre or place of safety, and any reference to a sentence shall be construed as a reference to a sentence passed by the court imposing sentence or by the High Court on appeal as the case may require.

269 Extract convictions

No extract conviction shall be issued during the period of ten days after the actual day on which such conviction took place, save in so far as the same may be required as a warrant for the detention of the person convicted under any sentence which shall have been pronounced against him nor, in the event of a note of appeal or of application for leave to appeal being lodged under this Part of this Act, until the determination thereof.

270 Custody of trial documents, etc.

- (1) Any document, production or other thing lodged in connection with the proceedings on the trial of any person who, if convicted, is entitled or may be authorised to appeal under this Part of this Act, shall, in accordance with the provisions of this section, be kept in the custody of the court in which the conviction took place.
- (2) All documents and other productions produced at the trial of a person convicted shall be kept for the period of ten days after the actual day on which the conviction took place in the custody of the court of trial in such manner as it may direct, and, failing direction, such custody shall be in the hands of the sheriff clerk of the district of the court of the second diet to whom the clerk of court shall hand them over at the close of the trial, unless otherwise ordered by the High Court on a note of appeal or application for leave to appeal being lodged, and if within such period of ten days or any extension thereof authorised by the High Court a note of appeal or of application for leave to appeal has been lodged under this Part of this Act, they shall be so kept until the determination thereof:

Provided that the judge of the court in which the conviction took place may, on cause shown, grant an order authorising any of such documents or productions to be released on such conditions as to custody and return as he may deem it proper to prescribe.

- (3) All such documents or other productions so retained in custody or released and returned shall, under supervision of the custodian thereof, be made available for inspection and for the purpose of making copies of documents or productions to an appellant or applicant who has lodged a note of appeal or of application for leave to appeal or to his counsel or agent, and to the Crown Agent and the procurator-fiscal or his deposes.
- (4) In case no note of appeal or application for leave to appeal is lodged within such period of ten days or extension thereof as aforesaid, all such documents and productions shall be dealt with as they are in use to be dealt with according to the existing law and practice at the conclusion of a trial.

271 Clerk of Justiciary to furnish forms, etc.

The Clerk of Justiciary shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application under this Part of this Act to any person who demands the same, and to officers of courts, governors of prisons, and such other officers or persons as he thinks fit, and the governor of a prison shall cause those forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under this Part of this Act, and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the Clerk of Justiciary.

272 Note to be kept of appeal

The Clerk of Justiciary shall in all cases of appeal or of application for leave to appeal from a conviction obtained or sentence pronounced in the High Court, note on the margin of the record of the trial the fact of an appeal or application for leave to appeal having been taken and the result of the appeal or application for leave to appeal, and, in the case of an appeal or application for leave to appeal taken against any conviction obtained or sentence pronounced in the sheriff court, the Clerk of Justiciary shall notify the appropriate sheriff clerk of the result of the said appeal or application, and it shall be the duty of the sheriff clerk to enter on the margin of the record of the trial a note of such result.

273 Register of appeals

- (1) The Clerk of Justiciary shall keep a register, in such form as he thinks fit, of all cases in which he shall receive a note of appeal or note of application for leave to appeal under this Part of this Act, which register shall be open for public inspection at such place and at such hours as the Clerk of Justiciary, subject to the approval of the High Court, shall consider convenient.
- (2) The Clerk of Justiciary shall also take the necessary steps for preparing, from time to time, a list of cases to be dealt with by the High Court, and shall cause such list to be published in such manner as, subject to the approval of the High Court, he shall think convenient for giving due notice to any parties interested, of the hearing of such cases by the High Court.

274 Shorthand notes of trial

- (1) Shorthand notes shall be taken of the proceedings at the trial of any person who, if convicted, is entitled or may be authorised to appeal under this Part of this Act, and on any appeal or application for leave to appeal a transcript of the notes or any part thereof shall be made if the Clerk of Justiciary so directs, and furnished to him for the use of the High Court or any judge thereof:

Provided that a transcript shall be furnished to any party interested upon the payment of such charges as the Treasury may fix.

- (2) The Secretary of State may also, if he thinks fit in any case, direct a transcript of the shorthand notes to be made and furnished to him.
- (3) The cost of taking any such shorthand notes, and of any transcript where a transcript is directed to be made by the Clerk of the Justiciary or by the Secretary of State, shall

be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of moneys provided by Parliament.

- (4) In this section, the expression " proceedings at the trial" shall mean the whole proceedings, including discussions (a) on any objection to the relevancy of the indictment; (b) in reference to any challenge of jurors; and (c) on all questions arising in the course of the trial—with the decisions of the court thereon—the evidence led at the trial, any statement made by or on behalf of the prisoner, whether before or after verdict, the summing up by the judge, the speeches of counsel or agent, the verdict of the jury and sentence by the judge.

275 Certification of shorthand notes, etc.

- (1) The shorthand writer shall sign the shorthand notes taken by him of any trial or proceeding and certify the same to be complete and correct shorthand notes thereof and shall retain the same unless and until he is directed by the Clerk of Justiciary to forward a transcript of such shorthand notes to him.
- (2) The shorthand writer shall, on being directed by the Clerk of Justiciary, furnish to him for the use of the High Court a transcript of the whole or of any part of the shorthand notes taken by him of any trial or proceeding in reference to which an appellant has appealed under this Part of this Act.
- (3) The shorthand writer shall also furnish to a party interested in a trial or other proceeding in relation to which a person may appeal under this Part of this Act, and to no other person, a transcript of the whole or of any part of the shorthand notes of any such trial or other proceeding on payment by such party interested to such shorthand writer of his charges on such scale as the Treasury may fix.
- (4) A party interested in an appeal under this Part of this Act may obtain from the Clerk of Justiciary a copy of any documentary production lodged by or for any other party to the appeal, upon payment therefor of the charges thereof on the scale referred to in the preceding subsection.
- (5) For the purposes of this and the last foregoing section, " a party interested " shall mean the prosecutor or the person convicted or any other person named in, or immediately affected by, any order made by the judge of the court in which the conviction took place, or other person authorised to act on behalf of a party interested, as herein defined.
- (6) Whenever a transcript of the whole or, of any part of such shorthand notes is required for the use of the High Court, such transcript may be made by the shorthand writer who took and certified the shorthand notes or by such other competent person as the Clerk of Justiciary may direct.
- (7) A transcript of the whole or any part of the shorthand notes relating to the case of any appellant which may be required for the use of the High Court shall be typewritten and certified by the person making the same to be a correct and complete transcript of the whole or of such part, as the case may be, of the shorthand notes purporting to have been taken, signed and certified by the shorthand writer who took the same.

276 Declaration administered to shorthand writer

The entry in the minute book of the court of trial shall be signed by the clerk of court and shall be in the following terms, viz.:—

“The court directed that the whole proceedings in this case (or) in all the cases set down for trial at this sitting be taken down in shorthand and appointed shorthand writer, (address), to do so, and the declaration de fideli administratione officii was administered to him.”

277 Non-compliance with certain provisions may be waived

(1) Non-compliance with the provisions of this Act set out in subsection (2) of this section, or with any rule of practice for the time being in force under this Part of this Act (other than section 280 of this Act) relating to appeals and applications for leave to appeal, shall not prevent the further prosecution of an appeal or application if the High Court or a judge thereof consider it just and proper that such non-compliance be waived or remedied by amendment or otherwise. The High Court or a judge thereof may, in such manner as they or he think fit, direct the remedy of such non-compliance, and upon the same being remedied accordingly the appeal or application shall proceed.

(2) The provisions of this Act referred to in subsection (1) of this section are:—

section 229	section 250
section 232	section 251
section 233	section 253
section 234	section 257
section 235	section 259
section 236	section 260
section 237	section 261
section 239	section 264
section 241	section 265
section 242	section 267
section 243	section 269
section 244	section 270
section 246	section 272
section 248	section 273
section 249	section 275.

278 Forms of procedure may be varied

The Clerk of Justiciary may, with the sanction of the Lord Justice General and the Lord Justice Clerk, vary the forms set out in an Act of Adjournal under the Criminal Appeal (Scotland) Act 1926 or under this Act from time to time as may be found necessary for giving effect to the provisions of this Part of this Act.

279 Interpretation of sections 228 to 278 of this Act

In sections 228 to 278 of this Act, unless the context otherwise requires—

" appellant " includes a person who has been convicted and desires to appeal under this Part of this Act;

" sentence " includes any order of the High Court made on conviction with reference to the person convicted or his wife or children, and any recommendation of the High Court as to the making of a deportation order in the case of a person convicted and the power of the High Court to pass a sentence includes a power to make any such order of the court or recommendation, and a recommendation so made by the High Court shall have the same effect for the purposes of Articles 20 and 21 of the Aliens Order 1953 as the certificate and recommendation of the convicting court.

280 Appeals against hospital orders, etc.

Where a hospital order, guardianship order or an order restricting discharge has been made by a court in respect of a person charged or brought before it, he may, without prejudice to any other form of appeal under any rule of law, appeal against that order in the same manner as against a conviction.

Miscellaneous

281 High Court proceedings final

All interlocutors and sentences pronounced by the High Court under the authority of this Part of this Act shall be final and conclusive, and not subject to review by any court whatsoever, and it shall be incompetent to stay or suspend any execution or diligence issuing forth of the High Court under the authority of the same.

282 Acts of Adjournal

The High Court may by Act of Adjournal regulate the practice and procedure in relation to solemn criminal procedure under any enactment, including this Part of this Act, and make such rules and regulations as may be necessary to carry out the purposes and accomplish the objects of any enactment relating to solemn criminal procedure, including this Part of this Act, provided that no rule, regulation or provision which affects the governor or any other officer of a prison shall be made by any such Act of Adjournal except with the consent of the Secretary of State.