



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PART II

SUMMARY PROCEDURE

CONVICTION AND SENTENCE

Imprisonment, etc.

415 Restriction on imprisonment of person under 17

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

416 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 a court imposes detention on an offender under 21 years of age, the court shall state the reason for its opinion that no other method of dealing with him is appropriate, and the reason shall be entered in the record of the proceedings along with the finding and sentence.
- (4) 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

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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.

- (5) 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.

417 Restriction on imprisonment of first offenders

- (1) A court of summary jurisdiction shall not impose imprisonment on a first offender of or over the age of 21 unless the court is of the opinion that no other method of dealing with him is appropriate; and section 416 (2) of this Act shall apply for the purpose of determining whether any other method of dealing with such a person is appropriate as it applies for the purpose of determining whether any other method of dealing with a person under the age of 21 is appropriate.
- (2) Section 416(3) of this Act shall, with the necessary modifications, apply where a first offender of or over the age of 21 is sentenced to imprisonment as it applies where imprisonment is imposed on a person under that age.
- (3) A person falling to be dealt with for an offence shall be treated for the purposes of this section as a first offender if, but only if, he has not since attaining the age of 17 been convicted of any other offence, except an offence not punishable with imprisonment.
- (4) In determining for the purposes of subsection (3) of this section whether a person has been convicted of an offence, no account shall be taken of any of the following enactments, that is to say—
- (a) section 191 or 392 of this Act (under which a conviction leading to probation or discharge is to be disregarded except as therein mentioned);
 - (b) section 13 of the Powers of Criminal Courts Act 1973 (which makes similar provision in respect of convictions on indictment in England and Wales);
 - (c) section 8 of the Probation Act (Northern Ireland) 1950 or any corresponding enactment of the Parliament of Northern Ireland for the time being in force;
- and any order made by a court of summary jurisdiction under section 383 or 384 of this Act shall be treated as a conviction.
- (5) For the purposes of subsection (3) of this section, a previous conviction shall be disregarded after the expiration of a period of 10 years from the date of that conviction, being a period exclusive of any period during which the offender was in custody under sentence in respect of the conviction.
- (6) In this section "court" does not include a court-martial, and "offence not punishable with imprisonment" means an offence for which no offender may be sentenced to imprisonment.

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418 Detention in a 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.

419 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.

420 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.

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421 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.

422 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).

423 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 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 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, this Part 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 this Part 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.

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- (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 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 12 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 paragraph 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.

424 Detention in precincts of court

Where a court of summary jurisdiction has power to impose imprisonment on an offender it may, in lieu of so doing, order that the offender be detained within the precincts of the court or at any police station, till such hour, not later than eight in the evening on the day on which he is convicted, as the court may direct:

Provided that before making an order under this section a court shall take into consideration the distance between the proposed place of detention and the offender's residence (if known to, or ascertainable by, the court), and shall not make any such order under this section as would deprive the offender of a reasonable opportunity of returning to his residence on the day on which the order is made.

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425 No imprisonment for less than five days

- (1) No person shall be sentenced to imprisonment by a court of summary jurisdiction for a period of less than five days.
- (2) Where a court of summary jurisdiction has power to impose imprisonment on an offender, it may, if any suitable place provided and certified as hereinafter mentioned is available for the purpose, sentence the offender to be detained therein, for such period not exceeding four days as the court thinks fit, and an extract of the finding and sentence shall be delivered with the offender to the person in charge of the place where the offender is to be detained and shall be a sufficient authority for his detention in that place in accordance with the sentence.
- (3) The expenses of the maintenance of offenders detained under this section shall be defrayed in like manner as the expenses of the maintenance of prisoners under the Prisons (Scotland) Act 1952.
- (4) The Secretary of State may, on the application of any police authority, certify any police cells or other similar places provided by the authority to be suitable places for the detention of persons sentenced to detention under this section, and may by statutory instrument make regulations for the inspection of places so provided, the treatment of persons detained therein and generally for carrying this section into effect.
- (5) No place certified under this section shall be used for the detention of females unless provision is made for their supervision by female officers.
- (6) In this section the expression " police authority " means a regional or islands council, except that where there is an amalgamation scheme under the Police (Scotland) Act 1967 in force it means a joint police committee.
- (7) Until 16th May 1975 the last foregoing subsection shall have effect as if, for the words " regional or islands council", there were substituted the words " council of a county or of a burgh which maintains a separate police force ".

426 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.