



Law Reform (Miscellaneous Provisions) (Scotland) Act 1985

1985 CHAPTER 73

Criminal courts, procedure, evidence and justice

33 Establishment and disestablishment of district courts

After section 1 of the District Courts (Scotland) Act 1975 there shall be inserted the following section—

“1A Further provision as to establishment and disestablishment of district courts.

- (1) Where it appears to the Secretary of State that—
 - (a) there is insufficient business for the district court in a particular commission area ; and
 - (b) such insufficiency of business is likely to continue,he may by order provide that the district court for that area cease to exist on a specified date.
- (2) Where it appears to the Secretary of State that, in a commission area in which there is no district court, there is likely to be sufficient business to justify the establishment of such a court, he may by order provide for the establishment of such a court in that area on a specified date.
- (3) An order under subsection (1) or (2) above may contain all such provisions as appear to the Secretary of State to be necessary or expedient for rendering the order of full effect and any incidental, supplemental or consequential provisions which appear to him to be necessary or expedient for the purposes of the order, including, but without prejudice to the generality of the foregoing words, provisions amending, repealing or revoking any enactment (whether passed or made before or after the commencement of this enactment).

- (4) Before making an order under subsection (1) or (2) above, the Secretary of State shall consult the district or islands council for the area concerned, and such other persons as appear to him to have an interest in the proposed order.
- (5) Orders under subsection (1) or (2) above shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.

34 Power of Secretary of State to remove justices etc.

In the District Courts (Scotland) Act 1975—

- (a) at the end of subsection (7) of section 11 (which relates to ex officio justices) there shall be inserted the words " and, notwithstanding that he remains a duly nominated member of the authority, may be removed from office in like manner as a justice appointed under that section. ";
- (b) in subsection (2) of section 15 (which relates to the supplemental list of justices), at the end of paragraph (a) there shall be inserted—
 - “(aa) that by reason of the justice's conduct it is expedient that he should cease to exercise judicial functions as a justice for the area ; or”

35 Provisions as to persons arrested in respect of terrorism

After section 3 of the Criminal Justice (Scotland) Act 1980 there shall be inserted the following sections—

“3A Rights of persons arrested or detained in connection with terrorism.

- (1) A person who has been arrested or detained under the terrorism provisions and who is in detention in a police station or other premises shall be entitled to have intimation of his detention and of the place where he is being detained sent without delay to a solicitor and to another person reasonably named by him:

Provided that a police officer not below the rank of superintendent may authorise a delay (not extending longer than the period of 48 hours from the start of the detention) where, in his view, such delay is necessary on one of the grounds mentioned in section 3C(3) of this Act.

- (2) Where a person arrested or detained under the terrorism provisions requests that the intimation be made, there shall be recorded the time when such request is—
 - (a) made; and
 - (b) complied with.

- (3) A person arrested or detained under the terrorism provisions shall be entitled to consult a solicitor at any time, without delay:

Provided that a police officer not below the rank of superintendent may authorise a delay (not extending longer than the period of 48 hours from the start of the detention) where, in his view, such delay is necessary on one of the grounds mentioned in section 3C(3) of this Act.

- (4) Subject to section 3C of this Act the consultation provided for in subsection (3) above shall be private.

3B Provisions as to children detained in connection with terrorism.

- (1) Subject to the provisions of this section the provisions of section 3A of this Act apply to children as they apply to adults.
- (2) Without prejudice to—
 - (a) subsection (3) of this section, or
 - (b) his entitlement, in terms of section 3A(1), to have intimation of his detention and of the place where he is being detained sent to a solicitor—

a person arrested or detained under the terrorism prevention provisions who appears to a constable to be a child shall not be entitled to have such intimation sent to any other person named by him.
- (3) Where it appears to a constable that a person arrested or detained under the terrorism provisions is a child, he shall, subject to subsection (4), without delay—
 - (a) send intimation of the arrest or detention and of the place where the child is being held to his parent (if known); and
 - (b) allow such parent access to the child.
- (4) A police officer not below the rank of superintendent may authorise—
 - (a) a delay in compliance with the duty mentioned in subsection (3)(a) above ;
 - (b) non-compliance with the duty mentioned in subsection (3)(b) above, where such delay or, as the case may be, non-compliance is, in his view, necessary on one of the grounds mentioned in section 3C(3) of this Act:

Provided that any such delay in compliance with the duty mentioned in subsection (3) (a) shall not extend longer than the period of 48 hours from the start of the detention.
- (5) There shall be recorded the time at which the intimation mentioned in subsection (3)(a) is made.
- (6) Subject to section 3C of this Act the access mentioned in subsection (3)(b) above shall be private.
- (7) Where a child is, by virtue of any enactment, in the care either of a local authority or of a voluntary organisation, the intimation shall be either to the authority or organisation or to the parent, and the right of access shall be exercisable both by an officer of the authority or organisation and by the parent; and subsections (4) and (6) above and section 3C of this Act shall apply in relation to intimation and access under this subsection as they apply to intimation and access under subsection (3) above.

3C Provisions relating to consultations and access in connection with terrorism.

- (1) An officer not below the rank of Assistant Chief Constable may direct that the consultation or access mentioned in sections 3A(3) and 3B(3) of this Act respectively be in the presence of a uniformed officer not below the rank of

inspector if it appears to the officer giving the direction to be necessary on one of the grounds mentioned in subsection (3) below.

- (2) A uniformed officer directed to be present during a consultation or, as the case may be, access shall be an officer who, in the opinion of the officer giving the direction, has no connection with the case.
- (3) The grounds mentioned in sections 3A(1), 3A(3) and 3B(4) of this Act and in subsection (1) above are that it is in the interests of the investigation or prevention of crime, or of the apprehension, prosecution or conviction of offenders.
- (4) Where delay or non-compliance is authorised in the exercising of any of the rights or, as the case may be, the carrying out of any of the duties, mentioned in sections 3A(1), 3A(3), and 3B(3) of this Act, there shall be recorded the reason for such delay or non-compliance.

3D Interpretation and effect of sections 3A to 3D.

- (1) In sections 3A to 3C and this section of this Act—
 - (a) "terrorism provisions" means—
 - (i) section 12(1) of the Prevention of Terrorism (Temporary Provisions) Act 1984; or
 - (ii) any provisions conferring a power of arrest or detention and contained in an order under section 13 of that Act; and
 - (b) "child" and "parent" have the same meanings as in section 3 of this Act.
- (2) The provisions of sections 3A to 3C and this section of this Act shall have effect, in relation to persons arrested or detained under the terrorism provisions, in place of any enactment or rule of law under or by virtue of which a person arrested or detained may be entitled to communicate or consult with any other person."

36 Evidence in trials of certain sexual offences

- (1) After section 141 of the Criminal Procedure (Scotland) Act 1975 there shall be inserted the following sections—

“141A Evidence in relation to sexual offences.

- (1) In any trial of a person on any charge to which this section applies, subject to section 141B, the court shall not admit, or allow questioning designed to elicit, evidence which shows or tends to show that the complainer—
 - (a) is not of good character in relation to sexual matters;
 - (b) is a prostitute or an associate of prostitutes; or
 - (c) has at any time engaged with any person in sexual behaviour not forming part of the subject matter of the charge.
- (2) This section applies to a charge of committing or attempting to commit any of the following offences, that is to say
 - (a) rape;

- (b) sodomy;
- (c) assault with intent to rape;
- (d) indecent assault;
- (e) indecent behaviour (including any lewd, in decent or libidinous practice or behaviour);
- (f) an offence under section 106(1)(a) or 107 of the Mental Health (Scotland) Act 1984 (unlawful sexual intercourse with mentally handicapped female or with patient);
- (g) an offence under any of the following provisions of the Sexual Offences (Scotland) Act 1976—
 - (i) section 2 (procuring by threats etc.);
 - (ii) section 3 (unlawful sexual intercourse with girl under 13);
 - (iii) section 4 (unlawful sexual intercourse with girl under 16);
 - (iv) section 5 (indecent behaviour towards girl between 12 and 16);
 - (v) section 8 (abduction of girl under 18);
 - (vi) section 9 (unlawful detention of female) ; or
- (h) an offence under section 80(7) of the Criminal Justice (Scotland) Act 1980 (homosexual offences).

(3) In this section "complainer" means the person against whom the offence referred to in subsection (2) above is alleged to have been committed.

(4) This section does not apply to questioning, or evidence being adduced, by the Crown.

141B Exceptions to prohibition.

(1) Notwithstanding the terms of section 141 A, in any trial of a person on any charge to which that section applies, where the court is satisfied on an application by that person—

- (a) that the questioning or evidence referred to in section 141A(1) above is designed to explain or rebut evidence adduced, or to be adduced, otherwise than by or on behalf of that person,
- (b) that the questioning or evidence referred to in section 141A(1)(c) above—
 - (i) is questioning or evidence as to sexual behaviour which took place on the same occasion as the sexual behaviour forming the subject-matter of the charge, or
 - (ii) is relevant to the defence of incrimination, or
- (c) that it would be contrary to the interests of justice to exclude the questioning or evidence referred to in section 141A(1) above,

the court shall allow such questioning or, as the case may be, admit such evidence.

(2) Where questioning or evidence is or has been allowed or admitted under this section, the court may at any time limit as it thinks fit the extent of that questioning or evidence.

(3) Any application under this section shall be made in the course of the trial but in the absence of the jury, the complainer, any person cited as a witness and the public.”.

(2) After section 346 of the said Act there shall be inserted the following sections—

“346A Evidence in relation to sexual offences.

(1) In any trial of a person on any charge to which this section applies, subject to section 346B, the court shall not admit, or allow questioning designed to elicit, evidence which shows or tends to show that the complainer—

- (a) is not of good character in relation to sexual matters;
- (b) is a prostitute or an associate of prostitutes; or
- (c) has at any time engaged with any person in sexual behaviour not forming part of the subject matter of the charge.

(2) This section applies to a charge of committing or, in the case of paragraphs (b) to (g), attempting to commit any of the following offences, that is to say—

- (a) attempted rape;
- (b) sodomy;
- (c) assault with intent to rape;
- (d) indecent assault;
- (e) indecent behaviour (including any lewd, in decent or libidinous practice or behaviour);
- (f) an offence under any of the following provisions of the Sexual Offences (Scotland) Act 1976—
 - (i) section 2 (procuring by threats, etc.);
 - (ii) section 3(2) (unlawful sexual intercourse with girl under 13);
 - (iii) section 4 (unlawful sexual intercourse with girl under 16);
 - (iv) section 5 (indecent behaviour towards girl between 12 and 16);
 - (v) section 8 (abduction of girl under 18);
 - (vi) section 9 (unlawful detention of female); or
- (g) an offence under section 80(7) of the Criminal Justice (Scotland) Act 1980 (homosexual offences).

(3) In this section, " complainer " means the person against whom the offence referred to in subsection (2) above is alleged to have been committed.

(4) This section does not apply to questioning, or evidence being adduced, by the Crown.

346B Exceptions to prohibition.

(1) Notwithstanding the terms of section 346A above, in any trial of a person on any charge to which that section applies, where the court is satisfied on an application by that person—

- (a) that the questioning or evidence referred to in section 346A above is designed to explain or rebut evidence adduced, or to be adduced, otherwise than by or on behalf of that person,

- (b) that the questioning or evidence referred to in section 346A(1)(c) above—
 - (i) is questioning or evidence as to sexual behaviour which took place on the same occasion as the sexual behaviour forming the subject matter of the charge, or
 - (ii) is relevant to the defence of incrimination, or
 - (c) that it would be contrary to the interests of justice to exclude the questioning or evidence referred to in section 346A(1) above, the court shall allow such questioning or, as the case may be, admit such evidence.
- (2) Where questioning or evidence is or has been allowed or admitted under this section, the court may at any time limit as it thinks fit the extent of that questioning or evidence.
- (3) Any application under this section shall be made in the course of the trial but in the absence of the complainer, any person cited as a witness and the public”.

37 Evidence in replication

In each of sections 149A and 350A of the Criminal Procedure (Scotland) Act 1975 (evidence in replication), in subsection (1)(a), for the words " led by the defence " there shall be substituted the words " given by any defence witness ".

38 Corroboration not required in relation to vehicle licensing offences

In the Road Traffic Regulation Act 1984, in section 120 (which relaxes the requirement of corroboration in relation to certain road traffic and vehicle licensing offences), after subsection (2)(e) there shall be added—

“or,

- (f) by its being used or kept on a public road within the meaning of the Vehicles (Excise) Act 1971 without there being in force a licence under that Act for the vehicle within the meaning of section 8 of that Act”.

39 Fines in respect of drug offences

After section 193A of the Criminal Procedure (Scotland) Act 1975 there shall be inserted the following section—

“193B Offences relating to controlled drugs.

- (1) Without prejudice to section 395(1) of this Act (as applied to solemn proceedings by section 194), where a person is—
- (a) convicted on indictment of an offence to which this section relates, and
 - (b) sentenced in respect of that offence to a period of imprisonment or detention,
- the Court shall, unless it is satisfied that for any reason it would be inappropriate to do so, also impose a fine.

- (2) In determining the amount of a fine imposed pursuant to subsection (1), the Court shall have regard to any profits likely to have been made by the offender from the crime in respect of which he has been convicted.
- (3) This section relates to any of the offences mentioned in paragraphs (a) to (c) of subsection (4) or any offence mentioned in paragraphs (d) to (g) of that subsection where such latter offence involves a controlled drug as defined in section 2(1)(a) of the Misuse of Drugs Act 1971 ("the 1971 Act").
- (4) The offences are those created by—
- (a) section 4(2) of the 1971 Act (production, or being concerned in the production of, a controlled drug);
 - (b) section 4(3) of the 1971 Act (supply, or offer to supply, or being concerned in the supply, of a controlled drug);
 - (c) section 5(3) of the 1971 Act (possession of a controlled drug with intent to supply);
 - (d) section 50(2) and (3) of the Customs and Excise Management Act 1979 ("the 1979 Act") (importation etc. of prohibited goods);
 - (e) section 68(2) of the 1979 Act (exportation etc. of prohibited goods);
 - (f) section 170(1) of the 1979 Act (possessing or dealing with prohibited goods); and
 - (g) section 170(2) of the 1979 Act (being concerned in evasion or attempt at evasion of a prohibition).
- (5) Where a fine has been imposed pursuant to subsection (1) in respect of an offence to which this section relates, and the offender is sentenced to a period of imprisonment or detention because he has not paid that fine, that period of imprisonment or detention shall be served consecutively upon—
- (a) the period of imprisonment or detention in respect of the offence, and
 - (b) any period of imprisonment or detention imposed in respect of any other offence dealt with in the same proceedings,
- unless either of the latter periods is one of life imprisonment or detention for life.”.

40 Further provision as to fines

In the Criminal Procedure (Scotland) Act 1975, in section 407(1A) (periods of imprisonment for non-payment of fines)—

- (a) after " £10,000 " there shall be inserted " but not exceeding £20,000 " ;
- (b) after " 12 months " there shall be added—

“Exceeding £20,000 but not exceeding £50,000	18 months
Exceeding £50,000	2 years.”.

41 Penalties under food and drugs legislation

In the Food and Drugs (Scotland) Act 1956—

- (a) in subsection (1)(a) of section 40 (which relates to penalties) the words from " or to imprisonment" to " offence is continued " shall cease to have effect;

- (b) in subsection (1)(b) the words from " and ", where it occurs for the second time, to the end shall cease to have effect;
- (c) in subsection (8A) of section 56 (which specifies certain maximum penalties)
 - (i) in paragraph (a) the words " or imprisonment for a term not exceeding 6 months or both " shall cease to have effect; and
 - (ii) in paragraph (&)(i) the words " or imprisonment for a term not exceeding 6 months or both " shall cease to have effect.

42 Amendments of Prisons (Scotland) Act 1952

In the Prisons (Scotland) Act 1952—

- (a) section 7(2) (which relates to the appointment of women to visiting committees) shall cease to have effect;
- (b) for subsections (1) and (1A) of section 16 (which relates to the discharge of prisoners) there shall be substituted—
 - “(1) Where a prisoner would, but for this subsection, be discharged on a Saturday or Sunday, he shall be discharged on the preceding Friday”;
- (c) for subsection (2) of section 17 (which relates to allowances to prisoners on discharge) there shall be substituted—
 - “(2) The Secretary of State may make such payments to or in respect of persons released or about to be released from prisons as he may, with the consent of the Treasury, determine.”;
- (d) in section 34 (which relates to the temporary detention of young offenders) after the word " institution " there shall be inserted the words " , remand centre, "; and
- (e) section 35(5)(b) (which relates to special treatment for persons convicted of sedition) shall cease to have effect.

43 Detention of young offenders

In each of sections 207 and 415 of the Criminal Procedure (Scotland) Act 1975 (detention of young offenders)—

- (a) in subsection (5)(a), after the word " shall" there shall be inserted the words " , subject to subsection (5A) below, "; and
- (b) after the said subsection (5) there shall be inserted—
 - “(5A) Where detention in a detention centre would be required by subsection (5) above but the accused has already served such a sentence, the court shall order that the detention be in a young offenders institution, unless it appears to the court that, in the particular circumstances of the case, and having regard to the character of the offender, it would be more appropriate for the detention to be served in a detention centre.”.

44 Functions of Parole Board for Scotland and local review committees in relation to children detained on conviction on indictment

- (1) Section 59 of the Criminal Justice Act 1967 shall be amended in accordance with this section.
- (2) In subsection (3) of that section (duty of Parole Board for Scotland to advise Secretary of State on release from imprisonment and recall of certain persons)—
 - (a) in paragraph (a)—
 - (i) after the word " 61 " there shall be inserted the words " of this Act or section 206 of the Criminal Procedure (Scotland) Act 1975 (detention and release of children convicted on indictment) "; and
 - (ii) after the word " Act" there shall be inserted the words " section 12 of the Criminal Justice (Scotland) Act 1963 or section 206 or 206A of the Criminal Procedure (Scotland) Act 1975 ";
 - (b) in paragraph (c) for the word " applies " there shall be substituted the words " or the said section 206 applies or the recall of persons to whom the said section 12 or the said section 206A applies ".
- (3) In subsection (5) of that section (Board to be given any written representations made by person whose release or recall is under consideration)—
 - (a) in paragraph (a) after the word "Act" there shall be inserted the words " or section 206 of the Criminal Procedure (Scotland) Act 1975 "; and
 - (b) in paragraph (b) after the word "Act" there shall be inserted the words " section 12 of the Criminal Justice (Scotland) Act 1963 or section 206 or 206A of the Criminal Procedure (Scotland) Act 1975 ".
- (4) In subsection (6) of that section (establishment and functions of local review committees), in paragraph (a), after the words " of this Act" there shall be inserted the words " or section 206 of the Criminal Procedure (Scotland) Act 1975 ".

45 Supervision of children released after detention

- (1) After section 206 of the Criminal Procedure (Scotland) Act 1975 there shall be inserted the following section—

“206A Supervision of children after release.

- (1) A child released after detention under section 206 who has not been released on licence during the period of detention may be required, by notice given by the Secretary of State on his release, to be under the supervision of such officer as may be specified in the notice, and to comply, while the notice is in force, with such conditions as may be specified.
- (2) Subject to subsection (5) below, the supervision requirement shall not continue after the expiry of the period of 12 months from the date of release.
- (3) The Secretary of State may, on giving notice to the person concerned, at any time vary or cancel a requirement or condition specified under subsection (1) above.
- (4) A period of supervision required under subsection (1) above shall not extend beyond the date on which the person under supervision attains the age of 23 years.

- (5) Where, before a supervision requirement expires, the Secretary of State is satisfied that the person to whom it relates has failed to comply with its terms and either—
- (a) the Parole Board for Scotland so recommends ; or
 - (b) it appears to him to be in the public interest to do so before consultation with the Board is practicable, he may recall the person to detention for a period not exceeding 3 months ; and a person at large after such recall shall be deemed to be unlawfully at large.
- (6) The Secretary of State shall inform a person recalled under subsection (5) above of the reasons for his recall, so that the person may make representations in writing with respect to his recall to the Parole Board for Scotland; and the Board may, on receipt of such representations, require the Secretary of State to release him forthwith.
- (7) The Secretary of State may at any time release a person detained by virtue of subsection (5) above.
- (8) The powers conferred by subsection (5) above may be exercised as often as it appears to the Secretary of State that the person concerned has failed to comply with the supervision requirement; but no person may be recalled to detention for periods totalling more than 3 months by virtue of that subsection.
- (9) A recall under subsection (5) above may continue beyond the date of expiry of the supervision requirement unless the person to whom it relates is not in custody at that date.”.
- (2) In section 12 of the Criminal Justice (Scotland) Act 1963 (supervision of persons released from young offenders' institution)—
- (a) in subsection (7) after the word " above ", where first occurring, there shall be inserted
 - “and either—
 - (a) the Parole Board for Scotland so recommends; or
 - (b) it appears to him to be in the public interest to do so before consultation with the Board is practicable.”;
 - (b) after that subsection there shall be inserted the following subsection.
 - “(7A) The Secretary of State shall inform a person recalled under subsection (7) above of the reasons for his recall, so that the person may make representations in writing with respect to his recall to the Parole Board for Scotland; and the Board may, on receipt of such representations, require the Secretary of State to release him forthwith.”; and
 - (c) in subsection (9)—
 - (i) for the words "that person" there shall be substituted the words " a person released under subsection (7A) above or this subsection "; and
 - (ii) after the word " under ", where secondly occurring, there shall be inserted the words " subsection (7A) above or ".

46 Post-release supervision of service offenders

- (1) In section 71AA of the Army Act 1955 and the Air Force Act 1955 respectively and section 43AA of the Naval Discipline Act 1957 (custodial orders), after subsection (6A) in each case there shall be inserted the following subsection—

“(6B) Section 12 of the Criminal Justice (Scotland) Act 1963 (supervision of young offenders following release) shall apply to persons released from a term of detention under a custodial order as it applies to those released from a term of detention imposed under section 207 or section 415 of the Criminal Procedure (Scotland) Act 1975.”.

- (2) In paragraph 10 of Schedule 5A to the Army Act 1955 and to the Air Force Act 1955 respectively and Schedule 4A to the Naval Discipline Act 1957 (custodial orders), after sub-paragraph (6A) in each case there shall be inserted the following subparagraph—

“(6B) Section 12 of the Criminal Justice (Scotland) Act 1963 (supervision of young offenders following release) shall apply to persons released from a term of detention under a custodial order as it applies to those released from a term of detention imposed under section 207 or section 415 of the Criminal Procedure (Scotland) Act 1975.”.