



Criminal Justice (Scotland) Act 1987

1987 CHAPTER 41

PART II

MISCELLANEOUS

Miscellaneous

62 Ordaining to appear

- (1) In section 328 of the 1975 Act (adjournment for inquiry)—
 - (a) after the words "liberate him on bail" there shall be inserted the words ", ordain him to appear"; and
 - (b) in the proviso, after the words "allow bail" there shall be inserted the words "or to ordain a person to appear".
- (2) In section 329(1) of the 1975 Act (remand and committal of persons under 21) after the words "released on bail" there shall be inserted the words "or ordained to appear".
- (3) In paragraph (d) of section 337 of the 1975 Act (procedure following plea of not guilty by accused in custody) for the words from "either" there shall be substituted the following—
 - (i) if he is neither granted bail nor ordained to appear, or
 - (ii) if he is granted bail on a condition imposed under section 1(3) of the Bail etc. (Scotland) Act 1980 that a sum of money is deposited in court, until the accused or a cautioner on his behalf has so deposited that sum.”.
- (4) In section 300 of the 1975 Act (bail appeals)—
 - (a) in subsection (1)
 - (i) after the word "granted" there shall be inserted the words "or where the person is ordained to appear", and
 - (ii) after the words "amount fixed" there shall be inserted the words "or that such person has been ordained to appear"; and

(b) after subsection (4) there shall be inserted the following new subsection—

“(4A) When an appeal is taken by the prosecutor under this section against the fact that the person has been ordained to appear, subsection (4) above shall apply as it applies in the case of an appeal against the granting of bail or against the amount fixed.”.

63 Power to permit witness to be in court during trial

After each of sections 139 and 342 of the 1975 Act there shall be inserted the following new section where it shall be numbered respectively 139A and 342A—

Power to permit witness to be in court during trial.

The court may, on an application by any party to the proceedings, permit a witness to be in court during the proceedings or any part of the proceedings before he has given evidence if it appears to the court that the presence of the witness would not be contrary to the interests of justice.”.

64 Aiding and abetting

(1) In each of sections 216 and 428 of the 1975 Act for the words "statute or order" there shall be substituted the word "enactment"; and each of those sections as so amended shall be subsection (1) of that section and in each of those sections there shall be inserted the following subsection—

“(2) Without prejudice to subsection (1) above or to any express provision in any enactment having the like effect to this subsection, any person who aids, abets, counsels, procures or incites any other person to commit an offence against the provisions of any enactment shall be guilty of an offence and shall be liable on conviction, unless the enactment otherwise requires, to the same punishment as might be imposed on conviction of the first-mentioned offence.”.

(2) Subsection (1) above shall not apply to an offence committed before the commencement of this section.

65 Compensation requirement in probation order

(1) In each of sections 183 and 384 of the 1975 Act (probation orders) after subsection (5A) there shall (subject to subsection (2) below) be inserted the following subsections—

“(5B) Without prejudice to the generality of subsection (4) above, where a court is considering making a probation order it may include in the probation order, in addition to any other requirement, a requirement that the offender shall pay compensation either in a lump sum or by instalments for any personal injury, loss or damage caused (whether directly or indirectly) by the acts which constituted the offence; and the following provisions of the Criminal Justice (Scotland) Act 1980 shall apply to such a requirement as if any reference in them to a compensation order included a reference to a requirement to pay compensation under this subsection—

section 58(2) and (3);

section 59 (except the proviso to subsection (1));

section 60;

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section 62;
section 64 (except paragraph (a));
section 67.

(5C) Where the court imposes a requirement to pay compensation under subsection (5B) above—

- (a) it shall be a condition of a probation order containing such a requirement that payment of the compensation shall be completed not more than eighteen months after the making of the order or not later than two months before the end of the period of probation whichever first occurs;
- (b) the court, on the application of the offender or the officer of the local authority responsible for supervising the offender, may vary the terms of the requirement, including the amount of any instalments, in consequence of any change which may have occurred in the circumstances of the offender; and
- (c) in any proceedings for breach of a probation order where the breach consists only in the failure to comply with a requirement to pay compensation, a document purporting to be a certificate signed by the clerk of the court for the time being having jurisdiction in relation to the order that the compensation or, where payment by instalments has been allowed, any instalment has not been paid shall be sufficient evidence of such breach.”.

(2) In inserting the new subsection (5B)—

- (a) into the said section 183, after the words "subsection (1)" in the reference in that new subsection to section 59 of the Criminal Justice (Scotland) Act 1980 there shall be added the words "and subsection (2)";
- (b) into the said section 384, after the words "subsection (1)" in that reference there shall be added the words "and subsection (3)".

(3) In subsection (4) of each of the said sections 183 and 384 after the words "subsection (5A)" there shall be inserted the words "or (5B)".

(4) In subsection (6) of each of the said sections 183 and 384 for the words "or (5A)" there shall be substituted the words "(5A), (5B) or (5C)".

(5) In each of sections 186(2)(a) and 387(2)(a) of the 1975 Act (failure to comply with requirements of a probation order) at the beginning of the paragraph there shall be inserted the words "except in the case of a failure to comply with a requirement to pay compensation and".

66 Penalties in respect of summary conviction for certain offences

(1) In section 289G of the 1975 Act (which creates the standard scale and amends certain enactments accordingly), after subsection (9) there shall be added the following new subsections—

- “(10) Subject to subsection (12) below, where under a relevant subordinate instrument the fine or maximum fine on conviction of a summary offence specified in the instrument is an amount shown in the second column of the standard scale, the reference in the instrument to the amount of the fine or

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maximum fine shall be construed as a reference to the level in the first column of the standard scale corresponding to that amount.

- (11) In subsection (10) above, "relevant subordinate instrument" means any instrument made by virtue of an enactment after 30th April 1984 and before the commencement of section 66 of the Criminal Justice (Scotland) Act 1987.
 - (12) Subsection (10) above shall not affect so much of any instrument as (in whatever words) makes a person liable on summary conviction to a fine not exceeding a specified amount for each period of a specified length during which a continuing offence is continued after conviction or the occurrence of any other specified event.
 - (13) Where there is, under any enactment (however framed or worded) contained in an Act passed before the commencement of section 66 of the Criminal Justice (Scotland) Act 1987, a power to create summary offences by subordinate instrument, the maximum fine for a summary offence so created may be expressed as a fine not exceeding a level on the standard scale.
 - (14) Subsection (13) above has effect in relation to exercises of powers before as well as after the commencement of section 66 of the Criminal Justice (Scotland) Act 1987.”
- (2) After section 289G of the 1975 Act there shall be inserted the following new sections—

“289GA Statutory maximum as penalty in respect of summary conviction for offences in subordinate instruments.

- (1) Where there is, under any enactment (however framed or worded) contained in an Act passed before the commencement of section 66 of the Criminal Justice (Scotland) Act 1987, a power by subordinate instrument to create a criminal offence triable either on indictment or summarily, the maximum fine which may, in the exercise of the power, be authorised on summary conviction shall, by virtue of this section, be the statutory maximum (unless some larger maximum fine can be authorised on summary conviction of such an offence by virtue of an enactment other than this subsection).
- (2) Where there is, under any enactment (however framed or worded) contained in an Act passed before the commencement of section 66 of the Criminal Justice (Scotland) Act 1987, a power to create offences triable either on indictment or summarily by subordinate instrument, the maximum fine on summary conviction for such an offence may be expressed as a fine not exceeding the statutory maximum.
- (3) Subsections (1) and (2) above shall have effect in relation to any exercise of such power before as well as after the commencement of section 66 of the Criminal Justice (Scotland) Act 1987.
- (4) Where an offence created by a subordinate instrument made before the commencement of section 66 of the Criminal Justice (Scotland) Act 1987 may be tried either on indictment or summarily, the maximum fine which may be imposed on summary conviction shall by virtue of this subsection be the statutory maximum (unless the offence is one for which by virtue of the instrument a larger maximum fine may be imposed on summary conviction).

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- (5) Where a person summarily convicted of any offence to which subsection (4) above relates would, apart from this section, be liable to a fine or to a maximum fine of an amount in the case of a first conviction and of a different amount in the case of a second or subsequent conviction, subsection (4) above shall apply irrespective of whether the conviction is a first, second or subsequent one.
- (6) Subsection (4) above shall not affect so much of any instrument as (in whatever words) makes a person liable on summary conviction to a fine not exceeding a specified amount for each period of a specified length during which a continuing offence is continued after conviction or the occurrence of any other specified event.
- (7) Nothing in this section shall affect the punishment for an offence committed before the commencement of section 66 of the Criminal Justice (Scotland) Act 1987.

289GB Exceptionally high maximum fines.

- (1) The Secretary of State may by order amend an enactment or subordinate instrument specifying a sum to which this subsection applies so as to substitute for that sum such other sum as appears to him—
 - (a) to be justified by a change in the value of money appearing to him to have taken place since the last occasion on which the sum in question was fixed; or
 - (b) to be appropriate to take account of an order altering the standard scale which has been made or is proposed to be made.
- (2) Subsection (1) above applies to any sum which—
 - (a) is higher than level 5 on the standard scale; and
 - (b) is specified as the fine or the maximum fine which may be imposed on conviction of an offence which is triable only summarily.
- (3) The Secretary of State may by order amend an enactment or subordinate instrument specifying a sum to which this subsection applies so as to substitute for that sum such other sum as appears to him—
 - (a) to be justified by a change in the value of money appearing to him to have taken place since the last occasion on which the sum in question was fixed; or
 - (b) to be appropriate to take account of an order made or proposed to be made altering the statutory maximum.
- (4) Subsection (3) above applies to any sum which—
 - (a) is higher than the statutory maximum; and
 - (b) is specified as the maximum fine which may be imposed on summary conviction of an offence triable either on indictment or summarily.
- (5) An order under this section—
 - (a) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and
 - (b) shall not affect the punishment for an offence committed before that order comes into force.

(6) In this section—

"enactment" includes an enactment contained in an Act passed after the Criminal Justice (Scotland) Act 1987; and

"subordinate instrument" includes an instrument made after the passing of that Act.”.

67 Increases in periods of imprisonment for non-payment of fines etc.

(1) In subsection (1A) of section 407 of the 1975 Act (periods of imprisonment for non-payment of fines), in the Table, for the entry relating to an amount exceeding £50,000 there shall be substituted the following entries—

“Exceeding £50,000 but not exceeding £100,000	2 years
Exceeding £100,000 but not exceeding £250,000	3 years
Exceeding £250,000 but not exceeding £1 million	5 years
Exceeding £1 million	10 years.”.

(2) At the end of the said section 407 there shall be added the following subsection—

“(5) Where in any case—

- (a) the sheriff considers that the imposition of imprisonment for the number of years for the time being specified in section 2(2) of this Act would be inadequate; and
- (b) the maximum period of imprisonment which may be imposed under subsection (1) above (or under that subsection as read with either or both of sections 66(2) of the Criminal Justice (Scotland) Act 1980 and 7(2) of the Criminal Justice (Scotland) Act 1987) exceeds that number of years,

he shall remit the case to the High Court for sentence.”.

68 Suspension of disqualification, forfeiture etc.

(1) After section 443 of the 1975 Act there shall be inserted the following new section—

“443A Suspension of disqualification, forfeiture etc.

(1) Where upon conviction of any person—

- (a) any disqualification, forfeiture or disability attaches to him by reason of such conviction; or
- (b) 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,

if the court before which he was convicted thinks fit, the disqualification, forfeiture or disability or, as the case may be, destruction or forfeiture or order for destruction or forfeiture shall be suspended pending the determination of any appeal against conviction or sentence.

- (2) Subsection (1) above does not apply in respect of any disqualification, forfeiture or, as the case may be, destruction or forfeiture or order for destruction or forfeiture under or by virtue of any enactment which contains express provision for the suspension of such disqualification, forfeiture or, as the case may be, destruction or forfeiture or order for destruction or forfeiture pending the determination of any appeal against conviction or sentence.”.
- (2) In section 264 of that Act (suspension of disqualification, forfeiture etc. in solemn proceedings) after subsection (2) there shall be inserted the following new subsection—
- “(3) Subsections (1) and (2) above do not apply in respect of any disqualification, forfeiture or, as the case may be, destruction or forfeiture or order for destruction or forfeiture under or by virtue of any enactment which contains express provision for the suspension of such disqualification, forfeiture or, as the case may be, destruction or forfeiture or order for destruction or forfeiture pending the determination of any appeal against conviction or sentence.”.
- (3) Section 2 of the Act of Adjournal, Suspension of Disqualification from Driving Pending Appeal 1975 is hereby revoked.