



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART I

#### CRIMINAL COURTS

#### JURISDICTION AND POWERS

##### *The High Court*

#### **1 Judges in the High Court.**

- (1) The Lord President of the Court of Session shall be the Lord Justice General and shall perform his duties as the presiding judge of the High Court.
- (2) Every person who is 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.
- (3) If any difference arises as to the rotation of judges in the High Court, it shall be determined by the Lord Justice General, whom failing by the Lord Justice Clerk.
- (4) Any Lord Commissioner of Justiciary may preside alone at the trial of an accused before the High Court.
- (5) Without prejudice to subsection (4) above, in any trial of difficulty or importance it shall be competent for two or more judges in the High Court to preside for the whole or any part of the trial.

#### **2 Fixing of High Court sittings.**

- (1) The High Court shall sit at such times and places as the Lord Justice General, whom failing the Lord Justice Clerk, may, after consultation with the Lord Advocate, determine.

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- (2) Without prejudice to subsection (1) above, the High Court shall hold such additional sittings as the Lord Advocate may require.
- (3) Where an accused has been cited to attend a sitting of the High Court, the prosecutor may, at any time before the commencement of his trial, apply to the Court to transfer the case to another sitting of the High Court; and a single judge of the High Court may—
  - (a) after giving the accused or his counsel an opportunity to be heard; or
  - (b) on the joint application of all parties,
 make an order for the transfer of the case.
- (4) Where no cases have been indicted for a sitting of the High Court or if it is no longer expedient that a sitting should take place, it shall not be necessary for the sitting to take place.
- (5) If any case remains indicted for a sitting which does not take place in pursuance of subsection (4) above, subsection (3) above shall apply in relation to the transfer of any other such case to another sitting.

*Solemn courts: general*

### 3 Jurisdiction and powers of solemn courts.

- (1) The jurisdiction and powers of all courts of solemn jurisdiction, except so far as altered or modified by any enactment passed after the commencement of this Act, shall remain as at the commencement of this Act.
- (2) Any crime or offence which is triable on indictment may be tried by the High Court sitting at any place in Scotland.
- (3) 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, to pass a sentence of imprisonment for a term exceeding three years.
- (4) Subject to subsection (5) below, where under any enactment passed or made before 1st January 1988 (the date of commencement of section 58 of the <sup>M1</sup>Criminal Justice (Scotland) Act 1987) an offence is punishable on conviction on indictment by imprisonment for a term exceeding two years but the enactment either expressly or impliedly restricts the power of the sheriff to impose a sentence of imprisonment for a term exceeding two years, it shall be competent for the sheriff to impose a sentence of imprisonment for a term exceeding two but not exceeding three years.
- (5) Nothing in subsection (4) above shall authorise the imposition by the sheriff of a sentence in excess of the sentence specified by the enactment as the maximum sentence which may be imposed on conviction of the offence.
- (6) Subject to any express exclusion contained in any enactment, it shall be lawful to indict in the sheriff court all crimes except murder, treason, rape and breach of duty by magistrates.

#### Marginal Citations

M1 1987 c.41.

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## *The sheriff*

### **4 Territorial 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 includes all criminal maritime causes and proceedings (including those applying to persons furth of Scotland) provided that the accused is, by virtue of any enactment or rule of law, subject to the jurisdiction of the sheriff before whom the case or proceeding is raised.
- (2) Where an offence is alleged to have been committed in one district in a sheriffdom, it shall be competent to try that offence in a sheriff court in any other district in that sheriffdom.
- (3) It shall not be competent for 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.
- (4) The sheriff shall have a concurrent jurisdiction with every other court of summary jurisdiction in relation to all offences competent for trial in such courts.

### **5 The sheriff: summary jurisdiction and powers.**

- (1) The sheriff, sitting as a court of summary jurisdiction, shall continue to have all the jurisdiction and powers exercisable by him at the commencement of this Act.
- (2) The sheriff shall, without prejudice to any other or wider powers conferred by statute, have power on convicting any person of a common law offence—
  - (a) to impose a fine not exceeding the prescribed sum;
  - (b) to ordain the accused to find caution for good behaviour for any period not exceeding 12 months to an amount not exceeding the prescribed sum either in lieu of or in addition to a fine or in addition to imprisonment;
  - (c) failing payment of such fine, or on failure to find such caution, to award imprisonment in accordance with section 219 of this Act;
  - (d) to impose imprisonment, for any period not exceeding three months.
- (3) Where a person is convicted by the sheriff of—
  - (a) a second or subsequent offence inferring dishonest appropriation of property, or attempt thereat; or
  - (b) a second or subsequent offence inferring personal violence,he may, without prejudice to any wider powers conferred by statute, be sentenced to imprisonment for any period not exceeding six months.
- (4) It shall be competent to prosecute summarily in the sheriff court the following offences—
  - (a) uttering a forged document;
  - (b) wilful fire-raising;
  - (c) robbery; and
  - (d) assault with intent to rob.

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## *District courts*

### **6 District courts: area, constitution and prosecutor.**

- (1) Each commission area shall be the district of a district court, and the places at which a district court sits and, subject to section 8 of this Act, the days and times when it sits at any given place, shall be determined by the local authority; and in determining where and when a district court should sit, the local authority shall have regard to the desirability of minimising the expense and inconvenience occasioned to those directly involved, whether as parties or witnesses, in the proceedings before the court.
- (2) The jurisdiction and powers of the district court shall be exercisable by a stipendiary magistrate or by one or more justices, and no decision of the court shall be questioned on the ground that it was not constituted as required by this subsection unless objection was taken on that ground by or on behalf of a party to the proceedings not later than the time when the proceedings or the alleged irregularity began.
- (3) All prosecutions in a commission area shall proceed at the instance of the procurator fiscal.
- (4) The procurator fiscal for an area which includes a commission area shall have all the powers and privileges conferred on a district prosecutor by section 6 of the <sup>M2</sup>District Courts (Scotland) Act 1975.
- (5) The prosecutions authorised by the said Act of 1975 under complaint by the procurator fiscal shall be without prejudice to complaints at the instance of any other person entitled to make the same.
- (6) In this section—
  - “commission area” means the area of a local authority;
  - “justice” means a justice of the peace appointed or deemed to have been appointed under section 9 of the said Act of 1975; and
  - “local authority” means a council constituted under section 2 of the <sup>M3</sup>Local Government (Scotland) Act 1994.

#### **Marginal Citations**

**M2** 1975 c.20.

**M3** 1994 c.39.

### **7 District court: jurisdiction and powers.**

- (1) A district court shall continue to have all the jurisdiction and powers exercisable by it at the commencement of this Act.
- (2) Where several offences, which if committed in one commission area could be tried under one complaint, are alleged to have been committed in different commission areas, proceedings may be taken for all or any of those offences under one complaint before the district court of any one of such commission areas, and any such offence may be dealt with, heard, tried, determined, adjudged and punished as if the offence had been wholly committed within the jurisdiction of that court.

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- (3) Except in so far as any enactment (including this Act or an enactment passed after this Act) otherwise provides, it shall be competent for a district court to try any statutory offence which is triable summarily.
- (4) It shall be competent, whether or not the accused has been previously convicted of an offence inferring dishonest appropriation of property, for any of the following offences to be tried in the district court—
- (a) theft or reset of theft;
  - (b) falsehood, fraud or wilful imposition;
  - (c) breach of trust or embezzlement,
- where (in any such case) the amount concerned does not exceed level 4 on the standard scale.
- (5) A district court when constituted by a stipendiary magistrate shall, in addition to the jurisdiction and powers mentioned in subsection (1) above, have the summary criminal jurisdiction and powers of a sheriff.
- (6) The district court shall, without prejudice to any other or wider powers conferred by statute, be entitled on convicting of a common law offence—
- (a) to impose imprisonment for any period not exceeding 60 days;
  - (b) to impose a fine not exceeding level 4 on the standard scale;
  - (c) to ordain the accused (in lieu of or in addition to such imprisonment or fine) to find caution for good behaviour for any period not exceeding six months and to an amount not exceeding level 4 on the standard scale;
  - (d) failing payment of such fine or on failure to find such caution, to award imprisonment in accordance with section 219 of this Act,
- but in no case shall the total period of imprisonment imposed in pursuance of this subsection exceed 60 days.
- (7) Without prejudice to any other or wider power conferred by any enactment, it shall not be competent for a district court, as respects any statutory offence—
- (a) to impose a sentence of imprisonment for a period exceeding 60 days;
  - (b) to impose a fine of an amount exceeding level 4 on the standard scale; or
  - (c) to ordain an accused person to find caution for any period exceeding six months or to an amount exceeding level 4 on the standard scale.
- (8) The district court shall not have jurisdiction to try or to pronounce sentence in the case of any person—
- (a) found within its jurisdiction, and brought before it accused or suspected of having committed any offence at any place beyond its jurisdiction; or
  - (b) brought before it accused or suspected of having committed within its jurisdiction any of the following offences—
    - (i) murder, culpable homicide, robbery, rape, wilful fire-raising, or attempted wilful fire-raising;
    - (ii) theft by housebreaking, or housebreaking with intent to steal;
    - (iii) theft or reset, falsehood fraud or wilful imposition, breach of trust or embezzlement, where the value of the property is an amount exceeding level 4 on the standard scale;
    - (iv) assault causing the fracture of a limb, assault with intent to ravish, assault to the danger of life, or assault by stabbing;

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- (v) uttering forged documents or uttering forged bank or banker's notes, or offences under the Acts relating to coinage.
- (9) Without prejudice to subsection (8) above, where either in the preliminary investigation or in the course of the trial of any offence it appears that the offence is one which—
- (a) cannot competently be tried in the court before which an accused is brought; or
  - (b) in the opinion of the court in view of the circumstances of the case, should be dealt with by a higher court,
- the court may take cognizance of the offence and commit the accused to prison for examination for any period not exceeding four days.
- (10) Where an accused is committed as mentioned in subsection (9) above, the prosecutor in the court which commits the accused shall forthwith give notice of the committal to the procurator fiscal of the district within which the offence was committed or to such other official as is entitled to take cognizance of the offence in order that the accused may be dealt with according to law.

#### *Sittings of sheriff and district courts*

### **8 Sittings of sheriff and district courts.**

- (1) Notwithstanding any enactment or rule of law, a sheriff court or a district court—
- (a) shall not be required to sit on any Saturday or Sunday or on a day which by virtue of subsection (2) or (3) below is a court holiday; but
  - (b) may sit on any day for the disposal of criminal business.
- (2) A sheriff principal may in an order made under section 17(1)(b) of the <sup>M4</sup>Sheriff Courts (Scotland) Act 1971 prescribe in respect of criminal business not more than 10 days, other than Saturdays and Sundays, in a calendar year as court holidays in the sheriff courts within his jurisdiction; and may in the like manner prescribe as an additional court holiday any day which has been proclaimed, under section 1(3) of the <sup>M5</sup>Banking and Financial Dealings Act 1971, to be a bank holiday either throughout the United Kingdom or in a place or locality in the United Kingdom within his jurisdiction.
- (3) Notwithstanding section 6(1) of this Act, a sheriff principal may, after consultation with the appropriate local authority, prescribe not more than 10 days, other than Saturdays and Sundays, in a calendar year as court holidays in the district courts within his jurisdiction; and he may, after such consultation, prescribe as an additional holiday any day which has been proclaimed, under section 1(3) of the said Banking and Financial Dealings Act 1971, to be a bank holiday either throughout the United Kingdom or in a place or locality in the United Kingdom within his jurisdiction.
- (4) A sheriff principal may in pursuance of subsection (2) or (3) above prescribe different days as court holidays in relation to different sheriff or district courts.

#### **Marginal Citations**

**M4** 1978 c.58.

**M5** 1971 c.80.

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### *Territorial jurisdiction: general*

## 9 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, the 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 metres of any such boundary, or partly within the jurisdiction of one court and partly within the jurisdiction of another court or courts, the offence may be tried by any one of such courts.
- (3) Where an offence is committed against any person or in respect of any property in or on any carriage, cart or vehicle employed in a journey by road or railway, or on board any vessel employed in a river, loch, canal or inland navigation, the offence may be tried by any court through whose jurisdiction the carriage, cart, vehicle or vessel passed in the course of the journey or voyage during which the offence was committed.
- (4) Where several offences, which if committed in one sheriff court district could be tried under one indictment or complaint, 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 or complaint 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.

### [<sup>F1</sup>9A Competence of justice's actings outwith jurisdiction

It is competent for a justice, even if not present within his jurisdiction, to sign any warrant, judgment, interlocutor or other document relating to proceedings within that jurisdiction provided that when he does so he is present within Scotland.]

#### Textual Amendments

- F1** S. 9A inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), ss. 59, 89; S.S.I. 2003/288, art. 2, Sch.

## 10 Crimes committed 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) below applies, he may be indicted to the sheriff court of such one of those districts as the Lord Advocate determines.
- (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.

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- (3) Where, in pursuance of subsection (1) above, 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 even if the crime was in whole or in part committed in a different district, and the procurator fiscal shall have the like powers in relation to such case, whether before, during or after the trial, as he has in relation to a case arising out of a crime or crimes committed wholly within his own district.

VALID FROM 10/03/2008

#### [<sup>F2</sup>10A Jurisdiction for transferred cases

- (1) A sheriff has jurisdiction for any cases which come before the sheriff by virtue of—
- (a) section 34A or 83 of this Act; or
  - (b) section 137A, 137B, 137C or 137D of this Act.
- (2) A procurator fiscal for a sheriff court district shall have—
- (a) power to prosecute in any cases which come before a sheriff of that district by virtue of a provision mentioned in subsection (1) above; and
  - (b) the like powers in relation to such cases as he has for the purposes of criminal proceedings which otherwise come before that sheriff.
- (3) Subsections (1) and (2) above, and the provisions mentioned in subsection (1) above, are without prejudice to sections 4, 9 and 10 of this Act.]

#### Textual Amendments

**F2** S. 10A inserted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), ss. 80, 84, [Sch. para. 11](#); [S.S.I. 2008/42](#), [art. 3](#), [Sch.](#)

## 11 Certain offences committed outside Scotland.

- (1) Any British citizen or 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 citizen or 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 to which this section applies—
- (a) in any sheriff court district in Scotland in which he is apprehended or is in custody; or
  - (b) in such sheriff court district as the Lord Advocate may determine,



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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.

(4) Any person who—

- (a) has in his possession in Scotland property which he has stolen in any other part of the United Kingdom; or
- (b) 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 he had stolen it in Scotland.

[<sup>F3</sup>(5) Where a person in any part of the United Kingdom outside Scotland—

- (a) steals or attempts to steal any mail-bag or postal packet in the course of its transmission by post, or any of the contents of such a mail-bag or postal packet; or
- (b) in stealing or with intent to steal any such mail-bag or postal packet or any of its contents commits any robbery, attempted robbery or assault with intent to rob,

he is guilty of the offence mentioned in paragraph (a) or (b) as if he had committed it in Scotland and shall be liable to be prosecuted, tried and punished there without proof that the offence was committed there.

(6) Any expression used in subsection (5) and in the Postal Services Act 2000 has the same meaning in that subsection as it has in that Act.]

#### Textual Amendments

**F3** S. 11(5)(6) inserted (26.3.2001) by 2000 c. 26, s. 127(4), **Sch. 8 para. 24**; S.I. 2001/1148, art. 2, **Sch.** (subject to arts. 3-42)

#### Modifications etc. (not altering text)

**C1** S. 11(3) applied (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {69(2)(c)}, 89; S.S.I. 2003/288, **art. 2**, **Sch.**

#### [<sup>F4</sup>11A Conspiracy to commit offences outside the United Kingdom.

- (1) This section applies to any act done by a person in Scotland which would amount to conspiracy to commit an offence but for the fact that the criminal purpose is intended to occur in a country or territory outside the United Kingdom.
- (2) Where a person does an act to which this section applies, the criminal purpose shall be treated as the offence mentioned in subsection (1) above and he shall, accordingly, be guilty of conspiracy to commit the offence.
- (3) A person is guilty of an offence by virtue of this section only if the criminal purpose would involve at some stage—
  - (a) an act by him or another party to the conspiracy; or
  - (b) the happening of some other event,
 constituting an offence under the law in force in the country or territory where the act or other event was intended to take place; and conduct punishable under the law in

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force in the country or territory is an offence under that law for the purposes of this section however it is described in that law.

- (4) Subject to subsection (6) below, a condition specified in subsection (3) above shall be taken to be satisfied unless, not later than such time as High Court may, by Act of Adjournal, prescribe, the accused serves on the prosecutor a notice—
- (a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in his opinion satisfied;
  - (b) setting out the grounds for his opinion; and
  - (c) requiring the prosecutor to prove that the condition is satisfied.
- (5) In subsection (4) above “the relevant conduct” means the agreement to effect the criminal purpose.
- (6) The court may permit the accused to require the prosecutor to prove that the condition mentioned in subsection (4) above is satisfied without the prior service of a notice under that subsection.
- (7) In proceedings on indictment, the question whether a condition is satisfied shall be determined by the judge alone.
- (8) Nothing in this section—
- (a) applies to an act done before the day on which the Criminal Justice (Terrorism and Conspiracy) Act 1998 was passed, or
  - (b) imposes criminal liability on any person acting on behalf of, or holding office under, the Crown.]

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#### Textual Amendments

**F4** S. 11A inserted (4.9.1998) by [Criminal Justice \(Terrorism and Conspiracy\) Act 1998 \(c. 40\), s. 7](#)

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