



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART IX

#### SUMMARY PROCEEDINGS

##### *Verdict and conviction*

#### **162 Judges equally divided**

In a summary prosecution in a court consisting of more than one judge, if the judges are equally divided in opinion as to the guilt of the accused, the accused shall be found not guilty of the charge or part thereof on which such division of opinion exists.

#### **163 Conviction: miscellaneous provisions**

- (1) Where imprisonment is authorised by the sentence of a court of summary jurisdiction, an extract of the finding and sentence in the form prescribed by Act of Adjournal shall be a sufficient warrant for the apprehension and commitment of the accused, and no such extract shall be void or liable to be set aside on account of any error or defect in point of form.
- (2) In any proceedings in a court of summary jurisdiction consisting of more than one judge, the signature of one judge shall be sufficient in all warrants or other proceedings prior or subsequent to conviction, and it shall not be necessary that the judge so signing shall be one of the judges trying or dealing with the case otherwise.

#### **164 Conviction of part of charge**

A conviction of a part or parts only of the charge or charges labelled in a complaint shall imply dismissal of the rest of the complaint.

**165 “Conviction” and “sentence” not to be used for children**

The words “conviction” and “sentence” shall not be used in relation to children dealt with summarily and any reference in any enactment, whether passed before or after the commencement of this Act, to a person convicted, a conviction or a sentence shall in the case of a child be construed as including a reference to a person found guilty of an offence, a finding of guilt or an order made upon such a finding as the case may be.

**166 Previous convictions: summary proceedings**

- (1) This section shall apply where the accused in a summary prosecution has been previously convicted of any offence and the prosecutor has decided to lay a previous conviction before the court.
- (2) A notice in the form prescribed by Act of Adjournal or as nearly as may be in such form specifying the previous conviction shall be served on the accused with the complaint where he is cited to a diet, and where he is in custody the complaint and such a notice shall be served on him before he is asked to plead.
- (3) The previous conviction shall not be laid before the judge until he is satisfied that the charge is proved.
- (4) If a plea of guilty is tendered or if, after a plea of not guilty, the accused is convicted the prosecutor shall lay the notice referred to in subsection (2) above before the judge, and—
  - (a) in a case where the plea of guilty is tendered in writing the accused shall be deemed to admit any previous conviction set forth in the notice, unless he expressly denies it in the writing by which the plea is tendered;
  - (b) in any other case the judge or the clerk of court shall ask the accused whether he admits the previous conviction,and if such admission is made or deemed to be made it shall be entered in the record of the proceedings; and it shall not be necessary for the prosecutor to produce extracts of any previous convictions so admitted.
- (5) Where the accused does not admit any previous conviction, the prosecutor unless he withdraws the conviction shall adduce evidence in proof thereof either then or at any other diet.
- (6) A copy of any notice served on the accused under this section shall be entered in the record of the proceedings.
- (7) 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.
- (8) Nothing in this section shall prevent the prosecutor—
  - (a) asking the accused questions tending to show that the accused has been convicted of an offence other than that with which he is charged, where he is entitled to do so under section 266 of this Act; or
  - (b) leading evidence of previous convictions where it is competent to do so—
    - (i) as evidence in support of a substantive charge; or
    - (ii) under section 270 of this Act.

## **167 Forms of finding and sentence**

- (1) Every sentence imposed by a court of summary jurisdiction shall unless otherwise provided be pronounced in open court in the presence of the accused, but need not be written out or signed in his presence.
- (2) The finding and sentence and any order of a court of summary jurisdiction, as regards both offences at common law and offences under any enactment, shall be entered in the record of the proceedings in the form, as nearly as may be, prescribed by Act of Adjournal.
- (3) The record of the proceedings shall be sufficient warrant for all execution on a finding, sentence or order and for the clerk of court to issue extracts containing such executive clauses as may be necessary for implement thereof.
- (4) When imprisonment forms part of any sentence or other judgement, warrant for the apprehension and interim detention of the accused pending his being committed to prison shall, where necessary, be implied.
- (5) Where a fine imposed by a court of summary jurisdiction is paid at the bar it shall not be necessary for the court to refer to the period of imprisonment applicable to the non-payment thereof.
- (6) Where several charges at common law or under any enactment are embraced in one complaint, a cumulo penalty may be imposed in respect of all or any of such charges of which the accused is convicted.
- (7) A court of summary jurisdiction may frame—
  - (a) a sentence following on conviction; or
  - (b) an order for committal in default of payment of any sum of money or for contempt of court,so as to take effect on the expiry of any previous sentence or order which, at the date of the later conviction or order, the accused is undergoing.
- (8) It shall be competent at any time before imprisonment has followed on a sentence for the court to alter or modify it; but no higher sentence than that originally pronounced shall be competent, and—
  - (a) the signature of the judge or clerk of court to any sentence shall be sufficient also to authenticate the findings on which such sentence proceeds; and
  - (b) the power conferred by this subsection to alter or modify a sentence may be exercised without requiring the attendance of the accused.

## **168 Caution**

- (1) This section applies with regard to the finding, forfeiture, and recovery of caution in any proceedings under this Part of this Act.
- (2) Caution may be found by consignation of the amount with the clerk of court, or by bond of caution signed by the cautioner.
- (3) Where caution becomes liable to forfeiture, forfeiture may be granted by the court on the motion of the prosecutor, and, where necessary, warrant granted for the recovery of the caution.

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

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- (4) Where a cautioner fails to pay the amount due under his bond within six days after he has received a charge to that effect, the court may—
- (a) order him to be imprisoned for the maximum period applicable in pursuance of section 219 of this Act to that amount or until payment is made; or
  - (b) if it considers it expedient, on the application of the cautioner grant time for payment; or
  - (c) instead of ordering imprisonment, order recovery by civil diligence in accordance with section 221 of this Act.

## **169 Detention in precincts of court**

- (1) Where a court of summary jurisdiction has power to impose imprisonment or detention on an offender it may, in lieu of so doing and subject to subsection (2) below, 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.
- (2) 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.