



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART IX

SUMMARY PROCEEDINGS

General

133 Application of Part IX of Act

- (1) This Part of this Act applies to summary proceedings in respect of any offence which might prior to the passing of this Act, or which may under the provisions of this or any Act, whether passed before or after the passing of this Act, be tried summarily.
- (2) Without prejudice to subsection (1) above, this Part of this Act also applies to procedure in all courts of summary jurisdiction in so far as they have jurisdiction in respect of—
 - (a) any offence or the recovery of a penalty under any enactment or rule of law which does not exclude summary procedure as well as, in accordance with section 211(3) and (4) of this Act, to the enforcement of a fine imposed in solemn proceedings; and
 - (b) any order *ad factum praestandum*, or other order of court or warrant competent to a court of summary jurisdiction.
- (3) Where any statute provides for summary proceedings to be taken under any public general or local enactment, such proceedings shall be taken under this Part of this Act.
- (4) Nothing in this Part of this Act shall—
 - (a) extend to any complaint or other proceeding under or by virtue of any statutory provision for the recovery of any rate, tax, or impost whatsoever; or
 - (b) affect any right to raise any civil proceedings.
- (5) Except where any enactment otherwise expressly provides, all prosecutions under this Part of this Act shall be brought at the instance of the procurator fiscal.

134 Incidental applications

- (1) This section applies to any application to a court for any warrant or order of court—
 - (a) as incidental to proceedings by complaint; or
 - (b) where a court has power to grant any warrant or order of court, although no subsequent proceedings by complaint may follow thereon.
- (2) An application to which this section applies may be made by petition at the instance of the prosecutor in the form prescribed by Act of Adjournal.
- (3) Where it is necessary for the execution of a warrant or order granted under this section, warrant to break open shut and lockfast places shall be implied.

135 Warrants of apprehension and search

- (1) A warrant of apprehension or search may be in the form prescribed by Act of Adjournal or as nearly as may be in such form, and any warrant of apprehension or search shall, where it is necessary for its execution, imply warrant to officers of law to break open shut and lockfast places.
- (2) A warrant of apprehension of an accused in the form mentioned in subsection (1) above shall imply warrant to officers of law to search for and to apprehend the accused, and to bring him before the court issuing the warrant, or before any other court competent to deal with the case, to answer the charge on which such warrant is granted, and, in the meantime, until he can be so brought, to detain him in a police station, police cell, or other convenient place.
- (3) A person apprehended under a warrant or by virtue of power under any enactment or rule of law shall wherever practicable be brought before a court competent to deal with the case not later than in the course of the first day after he is taken into custody.
- (4) The reference in subsection (3) above to the first day after he is taken into custody shall not include a Saturday, a Sunday or a court holiday prescribed for that court under section 8 of this Act; but nothing in this subsection shall prevent a person being brought before the court on a Saturday, a Sunday or such a court holiday where the court is, in pursuance of the said section 8, sitting on such day for the disposal of criminal business.
- (5) A warrant of apprehension or other warrant shall not be required for the purpose of bringing before the court an accused who has been apprehended without a written warrant or who attends without apprehension in answer to any charge made against him.

136 Time limit for certain offences

- (1) Proceedings under this Part of this Act in respect of any offence to which this section applies shall be commenced—
 - (a) within six months after the contravention occurred;
 - (b) in the case of a continuous contravention, within six months after the last date of such contravention,and it shall be competent in a prosecution of a contravention mentioned in paragraph (b) above to include the entire period during which the contravention occurred.

- (2) This section applies to any offence triable only summarily and consisting of the contravention of any enactment, unless the enactment fixes a different time limit.
- (3) For the purposes of this section proceedings shall be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted, if the warrant is executed without undue delay.

137 Alteration of diets

- (1) Where a diet has been fixed in a summary prosecution, it shall be competent for the court, on a joint application in writing by the parties or their solicitors, to discharge the diet and fix an earlier diet in lieu.
- (2) Where the prosecutor and the accused make joint application to the court (orally or in writing) for postponement of a diet which has been fixed, the court shall discharge the diet and fix a later diet in lieu unless the court considers that it should not do so because there has been unnecessary delay on the part of one of more of the parties.
- (3) Where all the parties join in an application under subsection (2) above, the court may proceed under that subsection without hearing the parties.
- (4) Where the prosecutor has intimated to the accused that he desires to postpone or accelerate a diet which has been fixed, and the accused refuses, or any of the accused refuse, to make a joint application to the court for that purpose, the prosecutor may make an incidental application for that purpose under section 134 of this Act; and after giving the parties an opportunity to be heard, the court may discharge the diet and fix a later diet or, as the case may be, an earlier diet in lieu.
- (5) Where an accused had intimated to the prosecutor and to all the other accused that he desires such postponement or acceleration and the prosecutor refuses, or any of the other accused refuse, to make a joint application to the court for that purpose, the accused who has so intimated may apply to the court for that purpose; and, after giving the parties an opportunity to be heard, the court may discharge the diet and fix a later diet or, as the case may be, an earlier diet in lieu.

Complaints

138 Complaints

- (1) All proceedings under this Part of this Act for the trial of offences or recovery of penalties shall be instituted by complaint signed by the prosecutor or by a solicitor on behalf of a prosecutor other than the procurator fiscal.
- (2) The complaint shall be in the form—
 - (a) set out in Schedule 5 to this Act; or
 - (b) prescribed by Act of Adjournal,or as nearly as may be in such form.
- (3) A solicitor may appear for and conduct any prosecution on behalf of a prosecutor other than the procurator fiscal.
- (4) Schedule 3 to this Act shall have effect as regards complaints under this Act.

139 Complaints: orders and warrants

- (1) On any complaint under this Part of this Act being laid before a judge of the court in which the complaint is brought, he shall have power on the motion of the prosecutor—
 - (a) to pronounce an order assigning a diet for the disposal of the case to which the accused may be cited as mentioned in section 141 of this Act;
 - (b) to grant warrant to apprehend the accused where this appears to the judge expedient;
 - (c) to grant warrant to search the person, dwelling-house and repositories of the accused and any place where he may be found for any documents, articles, or property likely to afford evidence of his guilt of, or guilty participation in, any offence charged in the complaint, and to take possession of such documents, articles or property;
 - (d) to grant any other order or warrant of court or warrant which may be competent in the circumstances.
- (2) The power of a judge under subsection (1) above—
 - (a) to pronounce an order assigning a diet for the disposal of the case may be exercised on his behalf by the clerk of court;
 - (b) to grant a warrant to apprehend the accused shall be exercisable notwithstanding that there is power whether at common law or under any Act to apprehend him without a warrant.

*Citation***140 Citation**

- (1) This Act shall be a sufficient warrant for the citation of the accused and witnesses in a summary prosecution to any ordinary sitting of the court or to any special diet fixed by the court or any adjournment thereof.
- (2) Such citation shall be in the form prescribed by Act of Adjournment or as nearly as may be in such form and shall, in the case of the accused, proceed on an *induciae* of at least 48 hours unless in the special circumstances of the case the court fixes a shorter *induciae*.
- (3) This section shall apply to the citation of witnesses for precognition by the prosecutor where a judge on the application of the prosecutor deems it expedient to grant warrant to cite witnesses for precognition in regard to any offence which may be competently tried in the court of that judge, and whether or not any person has at the time of such application been charged with such offence.

141 Manner of citation

- (1) The citation of the accused and witnesses in a summary prosecution to any ordinary sitting of the court or to any special diet fixed by the court or to any adjourned sitting or diet shall be effected by delivering the citation to him personally or leaving it for him at his dwelling-house or place of business with a resident or, as the case may be, employee at that place or, where he has no known dwelling-house or place of business, at any other place in which he may be resident at the time.
- (2) Notwithstanding subsection (1) above, citation may also be effected—

- (a) where the accused or witness is the master of, or a seaman or person employed in a vessel, if the citation is left with a person on board the vessel and connected with it;
 - (b) where the accused is a partnership, association or body corporate—
 - (i) if the citation is left at its ordinary place of business with a partner, director, secretary or other official; or
 - (ii) if it is cited in the same manner as if the proceedings were in a civil court; or
 - (c) where the accused is a body of trustees, if the citation is left with any one of them who is resident in Scotland or with their known solicitor in Scotland.
- (3) Subject to subsection (4) below, the citation of the accused or a witness to a sitting or diet or adjourned sitting or diet as mentioned in subsection (1) above shall be effective if it is signed by the prosecutor and—
- (a) in the case of the accused, sent by post in a registered envelope or through the recorded delivery service; and
 - (b) in the case of a witness, sent by ordinary post,
- to the dwelling-house or place of business of the accused or witness or, if he has no known dwelling-house or place of business, to any other place in which he may be resident at the time.
- (4) Where the accused fails to appear at a diet or sitting or adjourned diet or sitting to which he has been cited in the manner provided by this section, subsections (3) and (5) to (7) of section 150 of this Act shall not apply unless it is proved to the court that he received the citation or that its contents came to his knowledge.
- (5) The production in court of any letter or other communication purporting to be written by or on behalf of an accused who has been cited as mentioned in subsection (3) above in such terms as to infer that the contents of such citation came to his knowledge, shall be admissible as evidence of that fact for the purposes of subsection (4) above.
- (6) When the citation of any person is effected by post in terms of this section or any other provision of this Act to which this section is applied, the *induciae* shall be reckoned from 24 hours after the time of posting.
- (7) It shall be sufficient evidence that a citation has been sent by post in terms of this section or any other provision of this Act mentioned in subsection (6) above, if there is produced in court a written execution, signed by the person who signed the citation in the form prescribed by Act of Adjournal, or as nearly as may be in such form, together with the post office receipt for the relative registered or recorded delivery letter.

Children

142 Summary proceedings against children

- (1) Where summary proceedings are brought in respect of an offence alleged to have been committed by a child, the sheriff shall sit either in a different building or room from that in which he usually sits or on different days from those on which other courts in the building are engaged in criminal proceedings: and no person shall be present at any sitting for the purposes of such proceedings except—
- (a) members and officers of the court;

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- (b) parties to the case before the court, their solicitors and counsel, and witnesses and other persons directly concerned in that case;
 - (c) *bona fide* representatives of news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings;
 - (d) such other persons as the court may specially authorise to be present.
- (2) A sheriff sitting summarily for the purpose of hearing a charge against, or an application relating to, a person who is believed to be a child may, if he thinks fit to do so, proceed with the hearing and determination of the charge or application, notwithstanding that it is discovered that the person in question is not a child.
- (3) When a sheriff sitting summarily has remanded a child for information to be obtained with respect to him, any sheriff sitting summarily in the same place—
- (a) may in his absence extend the period for which he is remanded provided that he appears before a sheriff or a justice at least once every 21 days;
 - (b) when the required information has been obtained, may deal with him finally, and where the sheriff by whom he was originally remanded has recorded a finding that he is guilty of an offence charged against him it shall not be necessary for any court which subsequently deals with him under this subsection to hear evidence as to the commission of that offence, except in so far as it may consider that such evidence will assist the court in determining the manner in which he should be dealt with.
- (4) Any direction in any enactment that a charge shall be brought before a juvenile court shall be construed as a direction that he shall be brought before the sheriff sitting as a court of summary jurisdiction, and no such direction shall be construed as restricting the powers of any justice or justices to entertain an application for bail or for a remand, and to hear such evidence as may be necessary for that purpose.
- (5) This section does not apply to summary proceedings before the sheriff in respect of an offence where a child has been charged jointly with a person who is not a child.

Companies

143 Prosecution of companies, etc

- (1) Without prejudice to any other or wider powers conferred by statute, this section shall apply in relation to the prosecution by summary procedure of a partnership, association, body corporate or body of trustees.
- (2) Proceedings may be taken against the partnership, association, body corporate or body of trustees in their corporate capacity, and in that event any penalty imposed shall be recovered by civil diligence in accordance with section 221 of this Act.
- (3) Proceedings may be taken against an individual representative of a partnership, association or body corporate as follows:—
- (a) in the case of a partnership or firm, any one of the partners, or the manager or the person in charge or locally in charge of its affairs;
 - (b) in the case of an association or body corporate, the managing director or the secretary or other person in charge, or locally in charge, of its affairs,
- may be dealt with as if he was the person offending, and the offence shall be deemed to be the offence of the partnership, association or body corporate.

First diet

144 Procedure at first diet

- (1) Where the accused is present at the first calling of the case in a summary prosecution and—
 - (a) the complaint has been served on him, or
 - (b) the complaint or the substance thereof has been read to him, or
 - (c) he has legal assistance in his defence,he shall, unless the court adjourns the case under the section 145 of this Act and subject to subsection (4) below, be asked to plead to the charge.
- (2) Where the accused is not present at a calling of the case in a summary prosecution and either—
 - (a) the prosecutor produces to the court written intimation that the accused pleads not guilty or pleads guilty and the court is satisfied that the intimation has been made or authorised by the accused; or
 - (b) counsel or a solicitor, or a person not being counsel or a solicitor who satisfies the court that he is authorised by the accused, appears on behalf of the accused and tenders a plea of not guilty or a plea of guilty,subsection (3) below shall apply.
- (3) Where this subsection applies—
 - (a) in the case of a plea of not guilty, this Part of this Act except section 146(2) shall apply in like manner as if the accused had appeared and tendered the plea; and
 - (b) in the case of a plea of guilty, the court may, if the prosecutor accepts the plea, proceed to hear and dispose of the case in the absence of the accused in like manner as if he had appeared and pled guilty, or may, if it thinks fit, continue the case to another diet and require the attendance of the accused with a view to pronouncing sentence in his presence.
- (4) Any objection to the competency or relevancy of a summary complaint or the proceedings thereon, or any denial that the accused is the person charged by the police with the offence shall be stated before the accused pleads to the charge or any plea is tendered on his behalf.
- (5) No objection or denial such as is mentioned in subsection (4) above shall be allowed to be stated or issued at any future diet in the case except with the leave of the court, which may be granted only on cause shown.
- (6) Where in pursuance of subsection (3)(b) above the court proceeds to hear and dispose of a case in the absence of the accused, it shall not pronounce a sentence of imprisonment or of detention in a young offenders institution, remand centre or other establishment.
- (7) In this section a reference to a plea of guilty shall include a reference to a plea of guilty to only part of the charge, but where a plea of guilty to only part of a charge is not accepted by the prosecutor it shall be deemed to be a plea of not guilty.
- (8) It shall not be competent for any person appearing to answer a complaint, or for counsel or a solicitor appearing for the accused in his absence, to plead want of due citation or informality therein or in the execution thereof.

- (9) In this section, a reference to the first calling of a case includes a reference to any adjourned diet fixed by virtue of section 145 of this Act.

145 Adjourment for inquiry at first calling

- (1) Without prejudice to section 150(1) to (7) of this Act, at the first calling of a case in a summary prosecution the court may, in order to allow time for inquiry into the case or for any other cause which it considers reasonable, adjourn the case under this section, for such period as it considers appropriate, without calling on the accused to plead to any charge against him but remanding him in custody or on bail or ordaining him to appear at the diet thus fixed; and, subject to subsections (2) and (3) below, the court may from time to time so adjourn the case.
- (2) Where the accused is remanded in custody, the total period for which he is so remanded under this section shall not exceed 21 days and no one period of adjournment shall, except on special cause shown, exceed 7 days.
- (3) Where the accused is remanded on bail or ordained to appear, no one period of adjournment shall exceed 28 days.

146 Plea of not guilty

- (1) This section applies where the accused in a summary prosecution—
- (a) pleads not guilty to the charge; or
 - (b) pleads guilty to only part of the charge and the prosecutor does not accept the partial plea.
- (2) The court may proceed to trial at once unless either party moves for an adjournment and the court considers it expedient to grant it.
- (3) The court may adjourn the case for trial to as early a diet as is consistent with the just interest of both parties, and the prosecutor shall, if requested by the accused, furnish him with a copy of the complaint if he does not already have one.
- (4) Where the accused is brought before the court from custody the court shall inform the accused of his right to an adjournment of the case for not less than 48 hours and if he requests such adjournment before the prosecutor has commenced his proof, subject to subsection (5) below, the adjournment shall be granted.
- (5) Where the court considers that it is necessary to secure the examination of witnesses who otherwise would not be available, the case may proceed to trial at once or on a shorter adjournment than 48 hours.
- (6) Where the accused is in custody, he may be committed to prison or to legalised police cells or to any other place to which he may lawfully be committed pending trial—
- (a) if he is neither granted bail nor ordained to appear; or
 - (b) if he is granted bail on a condition imposed under section 24(6) of this Act that a sum of money is deposited in court, until the accused or a cautioner on his behalf has so deposited that sum.
- (7) The court may from time to time at any stage of the case on the motion of either party or *ex proprio motu* grant such adjournment as may be necessary for the proper conduct of the case, and where from any cause a diet has to be continued from day to day it shall not be necessary to intimate the continuation to the accused.

- (8) It shall not be necessary for the prosecutor to establish a charge or part of a charge to which the accused pleads guilty.
- (9) The court may, in any case where it considers it expedient, permit any witness for the defence to be examined prior to evidence for the prosecution having been led or concluded, but in any such case the accused shall be entitled to lead additional evidence after the case for the prosecution is closed.

Pre-trial procedure

147 Prevention of delay in trials

- (1) Subject to subsections (2) and (3) below, a person charged with an offence in summary proceedings shall not be detained in that respect for a total of more than 40 days after the bringing of the complaint in court unless his trial is commenced within that period, failing which he shall be liberated forthwith and thereafter he shall be for ever free from all question or process for that offence.
- (2) The sheriff may, on application made to him for the purpose, extend the period mentioned in subsection (1) above and order the accused to be detained awaiting trial for such period as he thinks fit where he is satisfied that delay in the commencement of the trial is due to—
 - (a) the illness of the accused or of a judge;
 - (b) the absence or illness of any necessary witness; or
 - (c) any other sufficient cause which is not attributable to any fault on the part of the prosecutor.
- (3) The grant or refusal of any application to extend the period mentioned in subsection (1) above may be appealed against by note of appeal presented to the High Court; and that Court may affirm, reverse or amend the determination made on such application.
- (4) For the purposes of this section, a trial shall be taken to commence when the first witness is sworn.

148 Intermediate diet

- (1) The court may at any time, as respects a case which is adjourned for trial, fix a diet (to be known as an intermediate diet) for the purpose of ascertaining, so far as is reasonably practicable, whether the case is likely to proceed to trial on the date assigned as the trial diet and, in particular—
 - (a) the state of preparation of the prosecutor and of the accused with respect to their cases;
 - (b) whether the accused intends to adhere to the plea of not guilty; and
 - (c) the extent to which the prosecutor and the accused have complied with the duty under section 257(1) of this Act.
- (2) Where at an intermediate diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—
 - (a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and
 - (b) may fix a further intermediate diet.

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

- (3) Subject to subsection (2) above, the court may, if it considers it appropriate to do so, adjourn an intermediate diet.
- (4) At an intermediate diet, the court may ask the prosecutor and the accused any question for the purposes mentioned in subsection (1) above.
- (5) The accused shall attend an intermediate diet of which he has received intimation or to which he has been cited unless—
 - (a) he is legally represented; and
 - (b) the court considers that there are exceptional circumstances justifying him not attending.
- (6) A plea of guilty may be tendered at the intermediate diet.
- (7) The foregoing provisions of this section shall have effect as respects any court prescribed by the Secretary of State by order, in relation to proceedings commenced after such date as may be so prescribed, with the following modifications—
 - (a) in subsection (1), for the word “may” there shall be substituted “shall, subject to subsection (1A) below,”; and
 - (b) after subsection (1) there shall be inserted the following subsections—
 - “(1A) If, on a joint application by the prosecutor and the accused made at any time before the commencement of the intermediate diet, the court considers it inappropriate to have such a diet, the duty under subsection (1) above shall not apply and the court shall discharge any such diet already fixed.
 - (1B) The court may consider an application under subsection (1A) above without hearing the parties.”.
- (8) An order under subsection (7) above shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

149 Alibi

It shall not be competent for the accused in a summary prosecution to found on a plea of alibi unless he gives, at any time before the first witness is sworn, notice to the prosecutor of the plea with particulars as to time and place and of the witnesses by whom it is proposed to prove it; and, on such notice being given, the prosecutor shall be entitled, if he so desires, to an adjournment of the case.

Failure of accused to appear

150 Failure of accused to appear

- (1) This section applies where the accused in a summary prosecution fails to appear at any diet of which he has received intimation, or to which he has been cited other than a diet which, by virtue of section 148(5) of this Act, he is not required to attend.
- (2) The court may adjourn the proceedings to another diet, and order the accused to attend at such diet, and appoint intimation of the diet to be made to him.
- (3) The court may grant warrant to apprehend the accused.

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- (4) Intimation under subsection (2) above shall be sufficiently given by an officer of law, or by letter signed by the clerk of court or prosecutor and sent to the accused at his last known address by registered post or by the recorded delivery service, and the production in court of the written execution of such officer or of an acknowledgement or certificate of the delivery of the letter issued by the Post Office shall be sufficient evidence of such intimation having been duly given.
- (5) Where the accused is charged with a statutory offence for which a sentence of imprisonment cannot be imposed in the first instance, or where the statute founded on or conferring jurisdiction authorises procedure in the absence of the accused, the court, on the motion of the prosecutor and upon being satisfied that the accused has been duly cited, or has received due intimation of the diet where such intimation has been ordered, may subject to subsections (6) and (7) below, proceed to hear and dispose of the case in the absence of the accused.
- (6) Unless the statute founded on authorises conviction in default of appearance, proof of the complaint must be led to the satisfaction of the court.
- (7) In a case to which subsection (5) above applies, the court may, if it considers it expedient, allow counsel or a solicitor who satisfies the court that he has authority from the accused so to do, to appear and plead for and defend him.
- (8) An accused who without reasonable excuse fails to attend any diet of which he has been given due notice, shall be guilty of an offence and liable on summary conviction—
 - (a) to a fine not exceeding level 3 on the standard scale; and
 - (b) to a period of imprisonment not exceeding—
 - (i) in the district court, 60 days; or
 - (ii) in the sheriff court, 3 months.
- (9) The penalties provided for in subsection (8) above may be imposed in addition to any other penalty which it is competent for the court to impose, notwithstanding that the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.
- (10) An accused may be dealt with for an offence under subsection (8) above either at his diet of trial for the original offence or at a separate trial.

Non-availability of judge

151 Death, illness or absence of judge

- (1) Where the court is unable to proceed owing to the death, illness or absence of the presiding judge, it shall be lawful for the clerk of court—
 - (a) where the diet has not been called, to convene the court and adjourn the diet;
 - (b) where the diet has been called but no evidence has been led, to adjourn the diet; and
 - (c) where the diet has been called and evidence has been led—
 - (i) with the agreement of the parties, to desert the diet *pro loco et tempore*; or
 - (ii) to adjourn the diet.

- (2) Where, under subsection (1)(c)(i) above, a diet has been deserted *pro loco et tempore*, any new prosecution charging the accused with the same or any similar offence arising out of the same facts shall be brought within two months of the date on which the diet was deserted notwithstanding that any other time limit for the commencement of such prosecution has elapsed.
- (3) For the purposes of subsection (2) above, a new prosecution shall be deemed to commence on the date on which a warrant to apprehend or to cite the accused is granted, if such warrant is executed without undue delay.

Trial diet

152 Desertion of diet

- (1) It shall be competent at the diet of trial, at any time before the first witness is sworn, for the court, on the application of the prosecutor, to desert the diet *pro loco et tempore*.
- (2) If, at a diet of trial, the court refuses an application by the prosecutor to adjourn the trial or to desert the diet *pro loco et tempore*, and the prosecutor is unable or unwilling to proceed with the trial, the court shall desert the diet *simpliciter*.
- (3) Where the court has deserted a diet *simpliciter* under subsection (2) above (and the court's decision in that regard has not been reversed on appeal), it shall not be competent for the prosecutor to raise a fresh libel.

153 Trial in presence of accused

- (1) Without prejudice to section 150 of this Act, and subject to subsection (2) below, no part of a trial shall take place outwith the presence of the accused.
- (2) If during the course of his trial an accused so misconducts himself that in the view of the court a proper trial cannot take place unless he is removed, the court may order—
 - (a) that he is removed from the court for so long as his conduct makes it necessary; and
 - (b) that the trial proceeds in his absence,but if he is not legally represented the court shall appoint counsel or a solicitor to represent his interests during such absence.

154 Proof of official documents

- (1) Any letter, minute or other official document issuing from the office or in the custody of any of the departments of state or government in the United Kingdom the production of which in evidence is required in any summary prosecution, and which according to the rules and regulations applicable to such departments may be competently produced, shall when produced be received as *prima facie* evidence of the matters contained in it without being produced or sworn to by any witness, and a copy thereof bearing to be certified by any person having authority to certify it shall be treated as equivalent to the original, and no proof of the signature of the person certifying such copy, or of his authority to certify it, shall be necessary.
- (2) Any order by any of the departments of state or government or any local authority or public body made under powers conferred by any statute, or a print or copy of such

order, shall when produced in a summary prosecution be received in evidence of the due making, confirmation, and existence of the order without being sworn to by any witness and without any further or other proof.

- (3) Subsection (2) above is without prejudice to any right competent to the accused to challenge any order such as is mentioned in that subsection as being *ultra vires* of the authority making it or on any other competent ground.
- (4) Where an order such as is mentioned in subsection (2) above is referred to in the complaint it shall not be necessary to enter it in the record of the proceedings as a documentary production.
- (5) The provisions of this section are in addition to, and not in derogation of, any powers of proving documents conferred by statute, or existing at common law.

155 Punishment of witness for contempt

- (1) If a witness in a summary prosecution—
 - (a) wilfully fails to attend after being duly cited; or
 - (b) unlawfully refuses to be sworn; or
 - (c) after the oath has been administered to him refuses to answer any question which the court may allow; or
 - (d) prevaricates in his evidence,he shall be deemed guilty of contempt of court and be liable to be summarily punished forthwith for such contempt by a fine not exceeding level 3 on the standard scale or by imprisonment for any period not exceeding 21 days.
- (2) Where punishment is summarily imposed as mentioned in subsection (1) above, the clerk of court shall enter in the record of the proceedings the acts constituting the contempt or the statements forming the prevarication.
- (3) Subsections (1) and (2) above are without prejudice to the right of the prosecutor to proceed by way of formal complaint for any such contempt where a summary punishment, as mentioned in the said subsection (1), is not imposed.
- (4) Any witness who, having been duly cited in accordance with section 140 of this Act—
 - (a) fails without reasonable excuse, after receiving at least 48 hours' notice, to attend for precognition by a prosecutor at the time and place mentioned in the citation served on him; or
 - (b) refuses when so cited to give information within his knowledge regarding any matter relative to the commission of the offence in relation to which such precognition is taken,shall be liable to the like punishment as is provided in subsection (1) above.

156 Apprehension of witness

- (1) Where a witness, having been duly cited, fails to appear at the diet fixed for his attendance and no just excuse is offered by him or on his behalf, the court may, if it is satisfied that he received the citation or that its contents came to his knowledge, issue a warrant for his apprehension.

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

- (2) Where the court is satisfied by evidence on oath that a witness is not likely to attend to give evidence without being compelled so to do, it may issue a warrant for his apprehension.
- (3) A warrant of apprehension of a witness in the form mentioned in section 135(1) of this Act shall imply warrant to officers of law to search for and apprehend the witness, and to detain him in a police station, police cell, or other convenient place, until—
 - (a) the date fixed for the hearing of the case; or
 - (b) the date when security to the amount fixed under subsection (4) below is found,whichever is the earlier.
- (4) A witness apprehended under a warrant under subsection (1) or (2) above shall, wherever practicable, be brought immediately by the officer of law who executed that warrant before a justice, who shall fix such sum as he considers appropriate as security for the appearance of the witness at all diets.

157 Record of proceedings

- (1) Proceedings in a summary prosecution shall be conducted summarily *viva voce* and, except where otherwise provided and subject to subsection (2) below, no record need be kept of the proceedings other than the complaint, or a copy of the complaint certified as a true copy by the procurator fiscal, the plea, a note of any documentary evidence produced, and the conviction and sentence or other finding of the court.
- (2) Any objection taken to the competency or relevancy of the complaint or proceedings, or to the competency or admissibility of evidence, shall, if either party desires it, be entered in the record of the proceedings.

158 Interruption of summary proceedings for verdict in earlier trial

Where the sheriff is sitting in summary proceedings during the period in which the jury in a criminal trial in which he has presided are retired to consider their verdict, it shall be lawful, if he considers it appropriate to do so, to interrupt those proceedings—

- (a) in order to receive the verdict of the jury and dispose of the cause to which it relates;
- (b) to give a direction to the jury on any matter on which they may wish one from him, or to hear a request from them regarding any matter,

and the interruption shall not affect the validity of the proceedings nor cause the instance to fall in respect of any person accused in the proceedings.

159 Amendment of complaint

- (1) It shall be competent at any time prior to the determination of the case, unless the court see just cause to the contrary, to amend the complaint or any notice of previous conviction relative thereto by deletion, alteration or addition, so as to—
 - (a) cure any error or defect in it;
 - (b) meet any objection to it; or
 - (c) cure any discrepancy or variance between the complaint or notice and the evidence.

- (2) Nothing in this section shall authorise an amendment which changes the character of the offence charged, and, if it appears to the court that the accused may in any way be prejudiced in his defence on the merits of the case by any amendment made under this section, the court shall grant such remedy to the accused by adjournment or otherwise as appears to the court to be just.
- (3) An amendment made under this section shall be sufficiently authenticated by the initials of the clerk of the court.

160 No case to answer

- (1) Immediately after the close of the evidence for the prosecution, the accused may intimate to the court his desire to make a submission that he has no case to answer both—
 - (a) on an offence charged in the complaint; and
 - (b) on any other offence of which he could be convicted under the complaint were the offence charged the only offence so charged.
- (2) If, after hearing both parties, the judge is satisfied that the evidence led by the prosecution is insufficient in law to justify the accused being convicted of the offence charged in respect of which the submission has been made or of such other offence as is mentioned, in relation to that offence, in paragraph (b) of subsection (1) above, he shall acquit him of the offence charged in respect of which the submission has been made and the trial shall proceed only in respect of any other offence charged in the complaint.
- (3) If, after hearing both parties, the judge is not satisfied as is mentioned in subsection (2) above, he shall reject the submission and the trial shall proceed, with the accused entitled to give evidence and call witnesses, as if such submission had not been made.

161 Defence to speak last

In any trial the accused or, where he is legally represented, his counsel or solicitor shall have the right to speak last.

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.
- (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.

*Miscellaneous***170 Damages in respect of summary proceedings**

- (1) No judge, clerk of court or prosecutor in the public interest shall be found liable by any court in damages for or in respect of any proceedings taken, act done, or judgment, decree or sentence pronounced in any summary proceedings under this Act, unless—
 - (a) the person suing has suffered imprisonment in consequence thereof; and
 - (b) such proceedings, act, judgment, decree or sentence has been quashed; and
 - (c) the person suing specifically avers and proves that such proceeding, act, judgment, decree or sentence was taken, done or pronounced maliciously and without probable cause.
- (2) No such liability as aforesaid shall be incurred or found where such judge, clerk of court or prosecutor establishes that the person suing was guilty of the offence in respect whereof he had been convicted, or on account of which he had been apprehended or had otherwise suffered, and that he had undergone no greater punishment than was assigned by law to such offence.

- (3) No action to enforce such liability as aforesaid shall lie unless it is commenced within two months after the proceeding, act, judgment, decree or sentence founded on, or in the case where the Act under which the action is brought fixes a shorter period, within that shorter period.
- (4) In this section “judge” shall not include “sheriff”, and the provisions of this section shall be without prejudice to the privileges and immunities possessed by sheriffs.

171 Recovery of penalties

- (1) All penalties, for the recovery of which no special provision has been made by any enactment may be recovered by the public prosecutor in any court having jurisdiction.
- (2) Where a court has power to take cognisance of an offence the penalty attached to which is not defined, the punishment therefore shall be regulated by that applicable to common law offences in that court.

172 Forms of procedure

- (1) The forms of procedure for the purposes of summary proceedings under this Act and appeals therefrom shall be in such forms as are prescribed by Act of Adjournal or as nearly as may be in such forms.
- (2) All warrants (other than warrants of apprehension or search), orders of court, and sentences may be signed either by the judge or by the clerk of court, and execution upon any warrant, order of court, or sentence may proceed either upon such warrant, order of court, or sentence itself or upon an extract thereof issued and signed by the clerk of court.
- (3) Where, preliminary to any procedure, a statement on oath is required, the statement may be given before any judge, whether the subsequent procedure is in his court or another court.