



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART V

#### CHILDREN AND YOUNG PERSONS

#### 41 Age of criminal responsibility.

It shall be conclusively presumed that no child under the age of eight years can be guilty of any offence.

VALID FROM 28/03/2011

#### [<sup>F1</sup>41A Prosecution of children under 12

- (1) A child under the age of 12 years may not be prosecuted for an offence.
- (2) A person aged 12 years or more may not be prosecuted for an offence which was committed at a time when the person was under the age of 12 years.]

#### Textual Amendments

- F1** S. 41A inserted (prosp.) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 52(2), 206(1)

#### 42 Prosecution of children.

- (1) No child under the age of 16 years shall be prosecuted for any offence except on the instructions of the Lord Advocate, or at his instance; and no court other than the High Court and the sheriff court shall have jurisdiction over a child under the age of 16 years for an offence.

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- (2) Where a child is charged with any offence, his parent or guardian may in any case, and shall, if he can be found and resides within a reasonable distance, be required to attend at the court before which the case is heard or determined during all the stages of the proceedings, unless the court is satisfied that it would be unreasonable to require his attendance.
- (3) Where the child is arrested, the constable by whom he is arrested or the police officer in charge of the police station to which he is brought shall cause the parent or guardian of the child, if he can be found, to be warned to attend at the court before which the child will appear.
- (4) For the purpose of enforcing the attendance of a parent or guardian and enabling him to take part in the proceedings and enabling orders to be made against him, rules may be made under section 305 of this Act, for applying, with the necessary adaptations and modifications, such of the provisions of this Act relating to summary proceedings as appear appropriate for the purpose.
- (5) The parent or guardian whose attendance is required under this section is—
  - (a) the parent who has parental responsibilities or parental rights (within the meaning of sections 1(3) and 2(4) respectively of the <sup>M1</sup>Children (Scotland) Act 1995) in relation to the child; or
  - (b) the guardian having actual possession and control of him.
- (6) The attendance of the parent of a child shall not be required under this section in any case where the child was before the institution of the proceedings removed from the care or charge of his parent by an order of a court.
- (7) Where a child is to be brought before a court, notification of the day and time when, and the nature of the charge on which, the child is to be so brought shall be sent by the chief constable of the area in which the offence is alleged to have been committed to the local authority for the area in which the court will sit.
- (8) Where a local authority receive notification under subsection (7) above they shall make such investigations and submit to the court a report which shall contain such information as to the home surroundings of the child as appear to them will assist the court in the disposal of his case, and the report shall contain information, which the appropriate education authority shall have a duty to supply, as to the school record, health and character of the child.
- (9) Any child detained in a police station, or being conveyed to or from any criminal court, or waiting before or after attendance in such court, shall be prevented from associating with an adult (not being a relative) who is charged with any offence other than an offence with which the child is jointly charged.
- (10) Any female child shall, while detained, being conveyed or waiting as mentioned in subsection (9) above, be kept under the care of a woman.

#### Marginal Citations

M1 1995 c.36.

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### 43 Arrangements where children arrested.

- (1) Where a person who is apparently a child is apprehended, with or without warrant, and cannot be brought forthwith before a sheriff, a police officer of the rank of inspector or above or the officer in charge of the police station to which he is brought, shall inquire into the case, and, subject to subsection (3) below, shall liberate him on a written undertaking being entered into by him or his parent or guardian that he will attend at the hearing of the charge.
- (2) An undertaking mentioned in subsection (1) above shall be signed by the child or, as the case may be, the parent or guardian and shall be certified by the officer mentioned in that subsection.
- (3) A person shall not be liberated under subsection (1) where—
  - (a) the charge is one of homicide or other grave crime;
  - (b) it is necessary in his interest to remove him from association with any reputed criminal or prostitute; or
  - (c) the officer has reason to believe that his liberation would defeat the ends of justice.
- (4) Where a person who is apparently a child having been apprehended is not liberated as mentioned in subsection (1) above, the police officer referred to in that subsection shall cause him to be kept in a place of safety other than a police station until he can be brought before a sheriff unless the officer certifies—
  - (a) that it is impracticable to do so;
  - (b) that he is of so unruly a character that he cannot safely be so detained; or
  - (c) that by reason of his state of health or of his mental or bodily condition it is inadvisable so to detain him,and the certificate shall be produced to the court before which he is brought.
- (5) Where a person who is apparently a child has not been liberated as mentioned in subsection (1) above but has been kept under subsection (4) above, and it is decided not to proceed with the charge against him, a constable shall so inform the Principal Reporter.
- (6) Any person, who without reasonable excuse is in breach of an undertaking entered into by him under subsection (1) above after having been given due notice of the time and place of the diet, shall be guilty of an offence, and liable on summary conviction in addition to any other penalty which it is competent for the court to impose on him, to a fine not exceeding level 3 on the standard scale.
- (7) In any proceedings relating to an offence under this section, a writing, purporting to be such an undertaking as is mentioned in subsection (1) above and bearing to be signed and certified, shall be sufficient evidence of the undertaking given by the accused.

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

C1 S. 43 modified (1.4.1997) by S.I. 1996/3255, reg. 14(1)(b)

### 44 Detention of children.

- (1) Where a child appears before the sheriff in summary proceedings and pleads guilty to, or is found guilty of, an offence to which this section applies, the sheriff may order that

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he be detained in residential accommodation provided under Part II of the <sup>M2</sup>Children (Scotland) Act 1995 by the appropriate local authority for such period not exceeding one year as may be specified in the order in such place (in any part of the United Kingdom) as the local authority may, from time to time, consider appropriate.

- (2) This section applies to any offence in respect of which it is competent to impose imprisonment on a person of the age of 21 years or more.
- (3) Where a child in respect of whom an order is made under this section is detained by the appropriate local authority, that authority shall have the same powers and duties in respect of the child as they would have if he were subject to a supervision requirement.
- (4) Where a child in respect of whom an order is made under this section is also subject to a supervision requirement, subject to subsection (6) below, the supervision requirement shall be of no effect during any period for which he is required to be detained under the order.
- (5) The Secretary of State may, by regulations made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, make such provision as he considers necessary as regards the detention in secure accommodation of children in respect of whom orders have been made under this section.
- (6) Where a child is detained in residential accommodation in pursuance of an order under—
  - (a) subsection (1) above, he shall be released from such detention not later than the date by which half the period specified in the order has (following commencement of the detention) elapsed but, without prejudice to subsection (7) below, until the entire such period has so elapsed may be required by the local authority to submit to supervision in accordance with such conditions as they consider appropriate;
  - (b) subsection (1) above or (8) below, the local authority may at any time review his case and may, in consequence of such review and after having regard to the best interests of the child and the need to protect members of the public, release the child—
    - (i) for such period and on such conditions as the local authority consider appropriate; or
    - (ii) unconditionally.
- (7) Where a child released under paragraph (a) or (b)(ii) of subsection (6) above is subject to a supervision requirement, the effect of that requirement shall commence or, as the case may be, resume upon such release.
- (8) If, while released under paragraph (a) or (b) of subsection (6) above (and before the date on which the entire period mentioned in the said paragraph (a) has, following the commencement of the detention, elapsed), a child commits an offence to which this section applies and (whether before or after that date) pleads guilty to or is found guilty of it a court may, instead of or in addition to making any other order in respect of that plea or finding, order that he be returned to the residential accommodation provided by the authority which released him and that his detention in that accommodation or any other such accommodation provided by that authority shall continue for the whole or any part of the period which—
  - (a) begins with the date of the order for his return; and
  - (b) is equal in length to the period between the date on which the new offence was committed and the date on which that entire period elapses.

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- (9) An order under subsection (8) above for return to residential accommodation provided by the appropriate local authority—
- (a) shall be taken to be an order for detention in residential accommodation for the purpose of this Act and any appeal; and
  - (b) shall, as the court making that order may direct, either be for a period of detention in residential accommodation before and to be followed by, or to be concurrent with, any period of such detention to be imposed in respect of the new offence (being in either case disregarded in determining the appropriate length of the period so imposed).
- (10) Where a local authority consider it appropriate that a child in respect of whom an order has been made under subsection (1) or (8) above should be detained in a place in any part of the United Kingdom outside Scotland, the order shall be a like authority as in Scotland to the person in charge of the place to restrict the child's liberty to such an extent as that person may consider appropriate having regard to the terms of the order.
- (11) In this section—
- “the appropriate local authority” means—
- (a) where the child usually resides in Scotland, the local authority for the area in which he usually resides;
  - (b) in any other case, the local authority for the area in which the offence was committed; and
- “secure accommodation” has the meaning assigned to it in Part II of the <sup>M3</sup>Children (Scotland) Act 1995.

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

C2 S. 44 modified (1.4.1997) by S.I. 1996/3255, art. 13(1)

**Marginal Citations**

M2 1995 c.36.

M3 1995 c.36.

**45 Security for child's good behaviour.**

- (1) Where a child has been charged with an offence the court may order his parent or guardian to give security for his co-operation in securing the child's good behaviour.
- (2) Subject to subsection (3) below, an order under this section shall not be made unless the parent or guardian has been given the opportunity of being heard.
- (3) Where a parent or guardian has been required to attend and fails to do so, the court may make an order under this section.
- (4) Any sum ordered to be paid by a parent or guardian on the forfeiture of any security given under this section may be recovered from him by civil diligence or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child was charged.
- (5) In this section “parent” means either of the child's parents, if that parent has parental responsibilities or parental rights (within the meaning of sections 1(3) and 2(4) respectively of the Children (Scotland) Act 1995) in relation to him.

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## 46 Presumption and determination of age of child.

- (1) Where a person charged with an offence is brought before a court other than for the purpose of giving evidence, and it appears to the court that he is a child, the court shall make due enquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case, and the age presumed or declared by the court to be the age of that person shall, for the purposes of this Act or the <sup>M4</sup>Children and Young Persons (Scotland) Act 1937, be deemed to be the true age of that person.
- (2) The court in making any inquiry in pursuance of subsection (1) above shall have regard to the definition of child for the purposes of this Act.
- (3) Where in an indictment or complaint for—
  - (a) an offence under the Children and Young Persons (Scotland) 1937;
  - (b) any of the offences mentioned in paragraphs 3 and 4 of Schedule 1 to this Act; or
  - (c) an offence under section 1, 10(1) to (3) or 12 of the <sup>M5</sup>Criminal Law (Consolidation) (Scotland) Act 1995,
 it is alleged that the person by or in respect of whom the offence was committed was a child or was under or had attained any specified age, and he appears to the court to have been at the date of the commission of the alleged offence a child, or to have been under or to have attained the specified age, as the case may be, he shall for the purposes of this Act or the <sup>M6</sup>Children and Young Persons (Scotland) Act 1937 or Part I of the Criminal Law (Consolidation) (Scotland) Act 1995 be presumed at that date to have been a child or to have been under or to have attained that age, as the case may be, unless the contrary is proved.
- (4) Where, in an indictment or complaint for an offence under the Children and Young Persons (Scotland) Act 1937 or any of the offences mentioned in Schedule 1 to this Act, it is alleged that the person in respect of whom the offence was committed was a child or was a young person, it shall not be a defence to prove that the person alleged to have been a child was a young person or the person alleged to have been a young person was a child in any case where the acts constituting the alleged offence would equally have been an offence if committed in respect of a young person or child respectively.
- (5) An order or judgement of the court shall not be invalidated by any subsequent proof that—
  - (a) the age of a person mentioned in subsection (1) above has not been correctly stated to the court; or
  - (b) the court was not informed that at the material time the person was subject to a supervision requirement or that his case had been referred to a children’s hearing by virtue of regulations made under the <sup>M7</sup>Children (Scotland) Act 1995 for the purpose of giving effect to orders made in different parts of the United Kingdom.
- (6) Where it appears to the court that a person mentioned in subsection (1) above has attained the age of 17 years, he shall for the purposes of this Act or the Children and Young Persons (Scotland) Act 1937 be deemed not to be a child.
- (7) In subsection (3) above, references to a child (other than a child charged with an offence) shall be construed as references to a child under the age of 17 years; but

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except as aforesaid references in this section to a child shall be construed as references to a child within the meaning of section 307 of this Act.

#### Marginal Citations

- M4 1937 c.37.
- M5 1995 c.39.
- M6 1937 c.37.
- M7 1995 c.36.

#### 47 Restriction on report of proceedings involving children.

- (1) Subject to subsection (3) below, no newspaper report of any proceedings in a court shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any person under the age of 16 years concerned in the proceedings, either—
  - (a) as being a person against or in respect of whom the proceedings are taken; or
  - (b) as being a witness in the proceedings.
- (2) Subject to subsection (3) below, no picture which is, or includes, a picture of a person under the age of 16 years concerned in proceedings as mentioned in subsection (1) above shall be published in any newspaper in a context relevant to the proceedings.
- (3) The requirements of subsections (1) and (2) above shall be applied in any case mentioned in any of the following paragraphs to the extent specified in that paragraph—
  - (a) where a person under the age of 16 years is concerned in the proceedings as a witness only and no one against whom the proceedings are taken is under the age of 16 years, the requirements shall not apply unless the court so directs;
  - (b) where, at any stage of the proceedings, the court, if it is satisfied that it is in the public interest so to do, directs that the requirements (including the requirements as applied by a direction under paragraph (a) above) shall be dispensed with to such extent as the court may specify; and
  - (c) where the Secretary of State, after completion of the proceedings, if satisfied as mentioned in paragraph (b) above, by order dispenses with the requirements to such extent as may be specified in the order.
- (4) This section shall, with the necessary modifications, apply in relation to sound and television programmes included in a programme service (within the meaning of the <sup>M8</sup>Broadcasting Act 1990) as it applies in relation to newspapers.
- (5) A person who publishes matter in contravention of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 of the standard scale.
- (6) In this section, references to a court shall not include a court in England, Wales or Northern Ireland.

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

- C3 S. 47 modified (S.) (31.3.2006) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), ss. [111\(6\)](#), [145\(2\)](#); S.S.I. 2004/420, [art. 2](#) (as amended by S.S.I. 2005/553, art. 2)

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#### **Marginal Citations**

**M8** 1990 c.42.

### **48 Power to refer certain children to reporter.**

- (1) A court by or before which a person is convicted of having committed an offence to which this section applies may refer—
- (a) a child in respect of whom an offence mentioned in paragraph (a) or (b) of subsection (2) below has been committed; or
  - (b) any child who is, or who is likely to become, a member of the same household as the person who has committed an offence mentioned in paragraph (b) or (c) of that subsection or the person in respect of whom the offence so mentioned was committed,
- to the Principal Reporter, and certify that the offence shall be a ground established for the purposes of Chapter 3 of Part II of the <sup>M9</sup>Children (Scotland) Act 1995.
- (2) This section applies to an offence—
- (a) under section 21 of the <sup>M10</sup>Children and Young Persons (Scotland) Act 1937;
  - (b) mentioned in Schedule 1 to this Act; or
  - (c) in respect of a person aged 17 years or over which constitutes the crime of incest.

#### **Marginal Citations**

**M9** 1995 c.36.

**M10** 1937 c.37.

### **49 Reference or remit to children’s hearing.**

- (1) Where a child who is not subject to a supervision requirement pleads guilty to, or is found guilty of, an offence the court—
- (a) instead of making an order on that plea or finding, may remit the case to the Principal Reporter to arrange for the disposal of the case by a children’s hearing; or
  - (b) on that plea or finding may request the Principal Reporter to arrange a children’s hearing for the purposes of obtaining their advice as to the treatment of the child.
- (2) Where a court has acted in pursuance of paragraph (b) of subsection (1) above, the court, after consideration of the advice received from the children’s hearing may, as it thinks proper, itself dispose of the case or remit the case as mentioned in paragraph (a) of that subsection.
- (3) Where a child who is subject to a supervision requirement pleads guilty to, or is found guilty of, an offence the court dealing with the case if it is—
- (a) the High Court, may; and
  - (b) the sheriff court, shall,
- request the Principal Reporter to arrange a children’s hearing for the purpose of obtaining their advice as to the treatment of the child, and on consideration of that



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advice may, as it thinks proper, itself dispose of the case or remit the case as mentioned in subsection (1)(a) above.

- (4) Where a court has remitted a case to the Principal Reporter under this section, the jurisdiction of the court in respect of the child shall cease, and his case shall stand referred to a children's hearing.
- (5) Nothing in this section shall apply to a case in respect of an offence the sentence for which is fixed by law.
- (6) Where a person who is—
  - (a) not subject to a supervision requirement;
  - (b) over the age of 16; and
  - (c) not within six months of attaining the age of 18,is charged summarily with an offence and pleads guilty to, or has been found guilty of, the offence the court may request the Principal Reporter to arrange a children's hearing for the purpose of obtaining their advice as to the treatment of the person.
- (7) On consideration of any advice obtained under subsection (6) above, the court may, as it thinks proper—
  - (a) itself dispose of the case; or
  - (b) where the hearing have so advised, remit the case to the Principal Reporter for the disposal of the case by a children's hearing.

## **50 Children and certain proceedings.**

- (1) No child under 14 years of age (other than an infant in arms) shall be permitted to be present in court during any proceedings against any other person charged with an offence unless his presence is required as a witness or otherwise for the purposes of justice.
- (2) Any child present in court when, under subsection (1) above, he is not to be permitted to be so shall be ordered to be removed.
- (3) Where, in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, a person who, in the opinion of the court, is a child is called as a witness, the court may direct that all or any persons, not being—
  - (a) members or officers of the court;
  - (b) parties to the case before the court, their counsel or solicitors or persons otherwise directly concerned in the case;
  - (c) *bona fide* representatives of news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings; or
  - (d) such other persons as the court may specially authorise to be present,shall be excluded from the court during the taking of the evidence of that witness.
- (4) The powers conferred on a court by subsection (3) above shall be in addition and without prejudice to any other powers of the court to hear proceedings *in camera*.
- (5) Where in any proceedings relating to any of the offences mentioned in Schedule 1 to this Act, the court is satisfied that the attendance before the court of any person under the age of 17 years in respect of whom the offence is alleged to have been committed

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is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of that person.

- (6) Every court in dealing with a child who is brought before it as an offender shall have regard to the welfare of the child and shall in a proper case take steps for removing him from undesirable surroundings.

## 51 Remand and committal of children and young persons.

- (1) Where a court remands or commits for trial or for sentence a person under 21 years of age who is charged with or convicted of an offence and is not released on bail or ordained to appear, then, except as otherwise expressly provided by this section, the following provisions shall have effect—
- (a) subject to paragraph (b) below, if he is under 16 years of age the court shall, instead of committing him to prison, commit him to the local authority in whose area the court is situated to be detained—
    - (i) where the court so requires, in secure accommodation within the meaning of Part II of the <sup>M11</sup>Children (Scotland) Act 1995; and
    - (ii) in any other case, in a suitable place of safety chosen by the authority;
  - (b) if he is a person of over 16 years of age, or a child under 16 years of age but over 14 years of age who is certified by the court to be unruly or depraved, and the court has been notified by the Secretary of State that a remand centre is available for the reception from that court of persons of his class or description, he shall be committed to a remand centre instead of being committed to prison.
- (2) Where any person is committed to a local authority or to a remand centre under any provision of this Act, that authority or centre shall be specified in the warrant, and he shall be detained by the authority or in the centre for the period for which he is committed or until he is liberated in due course of law.
- (3) Where any person has been committed to a local authority under any provision of this Act, the court by which he was committed, if the person so committed is not less than 14 years of age and it appears to the court that he is unruly or depraved, may revoke the committal and commit the said person—
- (a) if the court has been notified that a remand centre is available for the reception from that court of persons of his class or description, to a remand centre; and
  - (b) if the court has not been so notified, to a prison.
- (4) Where in the case of a person under 16 years of age who has been committed to prison or to a remand centre under this section, the sheriff is satisfied that his detention in prison or a remand centre is no longer necessary, he may revoke the committal and commit the person to the local authority in whose area the court is situated to be detained—
- (a) where the court so requires, in secure accommodation within the meaning of Part II of the <sup>M12</sup>Children (Scotland) Act 1995; and
  - (b) in any other case, in a suitable place of safety chosen by the authority.

### Modifications etc. (not altering text)

- C4 S. 51(1)(a)(ii) modified (1.4.1997) by S.I. 1996/3255, reg. 14(1)(a)  
S. 51(4)(b) modified (1.4.1997) by S.I. 1996/3255, reg. 14(1)(a)

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**Marginal Citations**

**M11** 1995 c.36.

**M12** 1995 c.36.

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