



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XIII

MISCELLANEOUS

Lord Advocate

287 Demission of office by Lord Advocate

- (1) All indictments which have been raised by a Lord Advocate shall remain effective notwithstanding his subsequently having died or demitted office and may be taken up and proceeded with by his successor.
- (2) During any period when the office of Lord Advocate is vacant it shall be lawful to indict accused persons in name of the Solicitor General then in office.
- (3) The advocates depute shall not demit office when a Lord Advocate dies or demits office but shall continue in office until their successors receive commissions.
- (4) The advocates depute and procurators fiscal shall have power, notwithstanding any vacancy in the office of Lord Advocate, to take up and proceed with any indictment which—
 - (a) by virtue of subsection (1) above, remains effective; or
 - (b) by virtue of subsection (2) above, is in the name of the Solicitor General.
- (5) For the purposes of this Act, where, but for this subsection, demission of office by one Law Officer would result in the offices of both being vacant, he or, where both demit office on the same day, the person demitting the office of Lord Advocate shall be deemed to continue in office until the warrant of appointment of the person succeeding to the office of Lord Advocate is granted.
- (6) The Lord Advocate shall enter upon the duties of his office immediately upon the grant of his warrant of appointment; and he shall as soon as is practicable thereafter take the oaths of office before the Secretary of State or any Lord Commissioner of Justiciary.

288 Intimation of proceedings in High Court to Lord Advocate

- (1) In any proceeding in the High Court (other than a proceeding to which the Lord Advocate or a procurator fiscal is a party) it shall be competent for the court to order intimation of such proceeding to the Lord Advocate.
- (2) On intimation being made to the Lord Advocate under subsection (1) above, the Lord Advocate shall be entitled to appear and be heard in such proceeding.

*Treason trials***289 Procedure and evidence in trials for treason**

The procedure and rules of evidence in proceedings for treason and misprision of treason shall be the same as in proceedings according to the law of Scotland for murder.

*Certain rights of accused***290 Accused's right to request identification parade**

- (1) Subject to subsection (2) below, the sheriff may, on an application by an accused at any time after the accused has been charged with an offence, order that, in relation to the alleged offence, the prosecutor shall hold an identification parade in which the accused shall be one of those constituting the parade.
- (2) The sheriff shall make an order in accordance with subsection (1) above only after giving the prosecutor an opportunity to be heard and only if—
 - (a) an identification parade, such as is mentioned in subsection (1) above, has not been held at the instance of the prosecutor;
 - (b) after a request by the accused, the prosecutor has refused to hold, or has unreasonably delayed holding, such an identification parade; and
 - (c) the sheriff considers the application under subsection (1) above to be reasonable.

291 Precognition on oath of defence witnesses

- (1) The sheriff may, on the application of an accused, grant warrant to cite any person (other than a co-accused), who is alleged to be a witness in relation to any offence of which the accused has been charged, to appear before the sheriff in chambers at such time or place as shall be specified in the citation, for precognition on oath by the accused or his solicitor in relation to that offence, if the court is satisfied that it is reasonable to require such precognition on oath in the circumstances.
- (2) Any person who, having been duly cited to attend for precognition under subsection (1) above and having been given at least 48 hours notice, fails without reasonable excuse to attend shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 21 days; and the court may issue a warrant for the apprehension of the person concerned, ordering him to be brought before a sheriff for precognition on oath.

- (3) Any person who, having been duly cited to attend for precognition under subsection (1) above, attends but—
- (a) refuses to give information within his knowledge or to produce evidence in his possession; or
 - (b) prevaricates in his evidence,
- shall be guilty of an offence and shall be liable to be summarily subjected forthwith to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 21 days.

Mode of trial

292 Mode of trial of certain offences

- (1) Subject to subsection (6) below, the offences mentioned (and broadly described) in Schedule 10 to this Act shall be triable only summarily.
- (2) An offence created by statute shall be triable only summarily if—
- (a) the enactment creating the offence or any other enactment expressly so provides (in whatever words); or
 - (b) subject to subsections (4) and (5)(a) below, the offence was created by an Act passed on or before 29 July 1977 (the date of passing of the Criminal Law Act 1977) and the penalty or maximum penalty in force immediately before that date, on any conviction of that offence, did not include any of the following—
 - (i) a fine exceeding £400;
 - (ii) subject to subsection (3) below, imprisonment for a period exceeding 3 months;
 - (iii) a fine exceeding £50 in respect of a specified quantity or number of things, or in respect of a specified period during which a continuing offence is committed.
- (3) In the application of paragraph (b)(ii) of subsection (2) above, no regard shall be paid to the fact that section 5(3) of this Act permits the imposition of imprisonment for a period exceeding 3 months in certain circumstances.
- (4) An offence created by statute which is triable only on indictment shall continue only to be so triable.
- (5) An offence created by statute shall be triable either on indictment or summarily if—
- (a) the enactment creating the offence or any other enactment expressly so provides (in whatever words); or
 - (b) it is an offence to which neither subsection (2) nor subsection (4) above applies.
- (6) An offence which may under any enactment (including an enactment in this Act or passed after this Act) be tried only summarily, being an offence which, if it had been triable on indictment, could competently have been libelled as an additional or alternative charge in the indictment, may (the provisions of this or any other enactment notwithstanding) be so libelled, and tried accordingly.
- (7) Where an offence is libelled and tried on indictment by virtue of subsection (6) above, the penalty which may be imposed for that offence in that case shall not exceed that which is competent on summary conviction.

*Art and part and attempt***293 Statutory offences: art and part and aiding and abetting**

- (1) A person may be convicted of, and punished for, a contravention of any enactment, notwithstanding that he was guilty of such contravention as art and part only.
- (2) Without prejudice to subsection (1) above or to any express provision in any enactment having the like effect to this subsection, any person who aids, abets, counsels, procures or incites any other person to commit an offence against the provisions of any enactment shall be guilty of an offence and shall be liable on conviction, unless the enactment otherwise requires, to the same punishment as might be imposed on conviction of the first-mentioned offence.

294 Attempt at crime

- (1) Attempt to commit any indictable crime is itself an indictable crime.
- (2) Attempt to commit any offence punishable on complaint shall itself be an offence punishable on complaint.

*Legal custody***295 Legal custody**

Any person required or authorised by or under this Act or any other enactment to be taken to any place, or to be detained or kept in custody shall, while being so taken or detained or kept, be deemed to be in legal custody.

*Warrants***296 Warrants for search and apprehension to be signed by judge**

Any warrant for search or apprehension granted under this Act shall be signed by the judge granting it, and execution upon any such warrant may proceed either upon the warrant itself or upon an extract of the warrant issued and signed by the clerk of court.

297 Execution of warrants and service of complaints, etc

- (1) Any warrant granted by a justice may, without being backed or endorsed by any other justice, be executed throughout Scotland in the same way as it may be executed within the jurisdiction of the justice who granted it.
- (2) Any complaint, warrant, or other proceeding for the purposes of any summary proceedings under this Act may without endorsement be served or executed at any place within Scotland by any officer of law, and such service or execution may be proved either by the oath in court of the officer or by production of his written execution.
- (3) A warrant issued in the Isle of Man for the arrest of a person charged with an offence may, after it has been endorsed by a justice in Scotland, be executed there by the person bringing that warrant, by any person to whom the warrant was originally directed or

by any officer of law of the sheriff court district where the warrant has been endorsed in like manner as any such warrant issued in Scotland.

- (4) In subsection (3) above, “endorsed” means endorsed in the like manner as a process to which section 4 of the Summary Jurisdiction (Process) Act 1881 applies.
- (5) The Indictable Offences Act Amendment Act 1868 shall apply in relation to the execution in Scotland of warrants issued in the Channel Islands.

Trial judge’s report

298 Trial judge’s report

- (1) Without prejudice to sections 113 and 186(3)(b) of this Act, the High Court may, in relation to—
 - (a) an appeal under section 106(1), 108 or 175(2) to (4) of this Act;
 - (b) an appeal by way of bill of suspension or advocacion; or
 - (c) a petition to the nobile officium,at any time before the appeal is finally determined or, as the case may be, petition finally disposed of, order the judge who presided at the trial, passed sentence or otherwise disposed of the case to provide to the Clerk of Justiciary a report in writing giving the judge’s opinion on the case generally or in relation to any particular matter specified in the order.
- (2) The Clerk of Justiciary shall send a copy of a report provided under subsection (1) above to the convicted person or his solicitor, the Crown Agent and, in relation to cases referred under section 124(3) of this Act, the Secretary of State.
- (3) Subject to subsection (2) above, the report of the judge shall be available only to the High Court, the parties and, on such conditions as may be prescribed by Act of Adjournal, such other persons or classes of persons as may be so prescribed.

Correction of entries

299 Correction of entries

- (1) Subject to the provisions of this section, it shall be competent to correct any entry in—
 - (a) the record of proceedings in a prosecution; or
 - (b) the extract of a sentence passed or an order of court made in such proceedings, in so far as that entry constitutes an error of recording or is incomplete.
- (2) An entry mentioned in subsection (1) above may be corrected—
 - (a) by the clerk of the court, at any time before either the sentence or order of the court is executed or, on appeal, the proceedings are transmitted to the Clerk of Justiciary;
 - (b) by the clerk of the court, under the authority of the court which passed the sentence or made the order, at any time after the execution of the sentence or order of the court but before such transmission as is mentioned in paragraph (a) above; or
 - (c) by the clerk of the court under the authority of the High Court in the case of a remit under subsection (4)(b) below.

- (3) A correction in accordance with paragraph (b) or (c) of subsection (2) above shall be intimated to the prosecutor and to the former accused or his solicitor.
- (4) Where during the course of an appeal, the High Court becomes aware of an erroneous or incomplete entry, such as is mentioned in subsection (1) above, the court—
 - (a) may consider and determine the appeal as if such entry were corrected; and
 - (b) either before or after the determination of the appeal, may remit the proceedings to the court of first instance for correction in accordance with subsection (2)(c) above.
- (5) Any correction under subsections (1) and (2) above by the clerk of the court shall be authenticated by his signature and, if such correction is authorised by a court, shall record the name of the judge or judges authorising such correction and the date of such authorisation.

300 Amendment of records of conviction and sentence in summary proceedings

- (1) Without prejudice to section 299 of this Act, where, on an application in accordance with subsection (2) below, the High Court is satisfied that a record of conviction or sentence in summary proceedings inaccurately records the identity of any person, it may authorise the clerk of the court which convicted or, as the case may be, sentenced the person to correct the record.
- (2) An application under subsection (1) above shall be made after the determination of the summary prosecution and may be made by any party to the summary proceedings or any other person having an interest in the correction of the alleged inaccuracy.
- (3) The High Court shall order intimation of an application under subsection (1) above to such persons as it considers appropriate and shall not determine the application without affording to the parties to the summary proceedings and to any other person having an interest in the correction of the alleged inaccuracy an opportunity to be heard.
- (4) The power of the High Court under this section may be exercised by a single judge of the High Court in the same manner as it may be exercised by the High Court, and subject to the same provisions.

Rights of audience

301 Rights of audience

- (1) Without prejudice to section 103(8) of this Act, any solicitor who has, by virtue of section 25A (rights of audience) of the Solicitors (Scotland) Act 1980, a right of audience in relation to the High Court of Justiciary shall have the same right of audience in that court as is enjoyed by an advocate.
- (2) Any person who has complied with the terms of a scheme approved under section 26 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (consideration of applications made under section 25) shall have such rights of audience before the High Court of Justiciary as may be specified in an Act of Adjournal made under subsection (7)(b) of that section.

Fixed penalties

302 Fixed penalty: conditional offer by procurator fiscal

- (1) Where a procurator fiscal receives a report that a relevant offence has been committed he may send to the alleged offender a notice under this section (referred to in this section as a conditional offer); and where he issues a conditional offer the procurator fiscal shall notify the clerk of court specified in it of the issue of the conditional offer and of its terms.
- (2) A conditional offer—
 - (a) shall give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence;
 - (b) shall state—
 - (i) the amount of the appropriate fixed penalty for that offence;
 - (ii) the amount of the instalments by which the penalty may be paid; and
 - (iii) the intervals at which such instalments should be paid;
 - (c) shall indicate that if, within 28 days of the date on which the conditional offer was issued, or such longer period as may be specified in the conditional offer, the alleged offender accepts the offer by making payment of the fixed penalty or of the first instalment thereof to the clerk of court specified in the conditional offer at the address therein mentioned, any liability to conviction of the offence shall be discharged;
 - (d) shall state that proceedings against the alleged offender shall not be commenced in respect of that offence until the end of a period of 28 days from the date on which the conditional offer was issued, or such longer period as may be specified in the conditional offer; and
 - (e) shall state that acceptance of the offer in the manner described in paragraph (c) above by the alleged offender shall not be a conviction nor be recorded as such.
- (3) A conditional offer may be made in respect of more than one relevant offence and shall, in such a case, state the amount of the appropriate fixed penalty for all the offences in respect of which it is made.
- (4) Where payment of the appropriate fixed penalty or of the first instalment has not been made to the clerk of court, he shall, upon the expiry of the period of 28 days referred to in subsection (2)(c) above or such longer period as may be specified in the conditional offer, notify the procurator fiscal who issued the conditional offer that no payment has been made.
- (5) Proceedings shall not be brought against any person for the offence to which a conditional offer relates until the procurator fiscal receives notification from the clerk of court in accordance with subsection (4) above.
- (6) Where an alleged offender makes payment of the appropriate fixed penalty or of the first instalment to the clerk of court specified in the conditional offer no proceedings shall be brought against the alleged offender for the offence.
- (7) The Secretary of State shall, by order, prescribe a scale of fixed penalties for the purpose of this section, the amount of the maximum penalty on the scale being a sum not exceeding level 1 on the standard scale.

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

- (8) An order under subsection (7) above—
- (a) may contain provision as to the payment of fixed penalties by instalments; and
 - (b) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this section—
- (a) “a relevant offence” means any offence in respect of which an alleged offender could competently be tried before a district court, but shall not include a fixed penalty offence within the meaning of section 51 of the Road Traffic Offenders Act 1988 nor any other offence in respect of which a conditional offer within the meaning of sections 75 to 77 of that Act may be sent; and
 - (b) “the appropriate fixed penalty” means such fixed penalty on the scale prescribed under subsection (7) above as the procurator fiscal thinks fit having regard to the circumstances of the case.

303 Fixed penalty: enforcement

- (1) Subject to subsection (2) below, where an alleged offender accepts a conditional offer by paying the first instalment of the appropriate fixed penalty, any amount of the penalty which is outstanding at any time shall be treated as if the penalty were a fine imposed by the court, the clerk of which is specified in the conditional offer.
- (2) In the enforcement of a penalty which is to be treated as a fine in pursuance of subsection (1) above—
 - (a) any reference, howsoever expressed, in any enactment whether passed or made before or after the coming into force of this section to—
 - (i) the imposition of imprisonment or detention in default of payment of a fine shall be construed as a reference to enforcement by means of civil diligence;
 - (ii) the finding or order of the court imposing the fine shall be construed as a reference to a certificate given in pursuance of subsection (3) below;
 - (iii) the offender shall be construed as a reference to the alleged offender;
 - (iv) the conviction of the offender shall be construed as a reference to the acceptance of the conditional offer by the alleged offender;
 - (b) the following sections of this Act shall not apply—
 - section 211(7)
 - section 213(2);
 - section 214(1) to (6);
 - section 216(7);
 - section 219, except subsection (1)(b);
 - section 220;
 - section 221(2) to (4);
 - section 222(8); and
 - section 224.
- (3) For the purposes of any proceedings in connection with, or steps taken for, the enforcement of any amount of a fixed penalty which is outstanding, a document purporting to be a certificate signed by the clerk of court for the time being responsible

for the collection or enforcement of the penalty as to any matter relating to the penalty shall be conclusive of the matter so certified.

- (4) The Secretary of State may, by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, make such provision as he considers necessary for the enforcement in England and Wales or Northern Ireland of any penalty, treated in pursuance of subsection (1) above as a fine, which is transferred as a fine to a court in England and Wales or, as the case may be, Northern Ireland.