



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XIV

#### GENERAL

#### **304 Criminal Courts Rules Council.**

- (1) There shall be established a body, to be known as the Criminal Courts Rules Council (in this section referred to as “the Council”) which shall have the functions conferred on it by subsection (9) below.
- (2) The Council shall consist of—
  - (a) the Lord Justice General, the Lord Justice Clerk and the Clerk of Justiciary;
  - (b) a further Lord Commissioner of Justiciary appointed by the Lord Justice General;
  - (c) the following persons appointed by the Lord Justice General after such consultation as he considers appropriate—
    - (i) two sheriffs;
    - (ii) two members of the Faculty of Advocates;
    - (iii) two solicitors;
    - (iv) one sheriff clerk; and
    - (v) one person appearing to him to have a knowledge of the procedures and practices of the district court;
  - (d) two persons appointed by the Lord Justice General after consultation with the Lord Advocate, at least one of whom must be a procurator fiscal;
  - (e) two persons appointed by the Lord Justice General after consultation with the Secretary of State, at least one of whom must be a person appearing to the Lord Justice General to have—
    - (i) a knowledge of the procedures and practices of the courts exercising criminal jurisdiction in Scotland; and
    - (ii) an awareness of the interests of victims of crime and of witnesses in criminal proceedings; and

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- (f) any persons appointed under subsection (3) below.
- (3) The Lord Justice General may appoint not more than two further persons, and the Secretary of State may appoint one person, to membership of the Council.
- (4) The chairman of the Council shall be the Lord Justice General or such other member of the Council, being a Lord Commissioner of Justiciary, as the Lord Justice General may nominate.
- (5) The members of the Council appointed under paragraphs (b) to (f) of subsection (2) above shall, so long as they retain the respective qualifications mentioned in those paragraphs, hold office for three years and be eligible for reappointment.
- (6) Any vacancy in the membership of the Council by reason of the death or demission of office, prior to the expiry of the period for which he was appointed, of a member appointed under any of paragraphs (b) to (f) of subsection (2) above shall be filled by the appointment by the Lord Justice General or, as the case may be, the Secretary of State, after such consultation as is required by the paragraph in question, of another person having the qualifications required by that paragraph, and a person so appointed shall hold office only until the expiry of that period.
- (7) The Council shall meet—
  - (a) at intervals of not more than 12 months; and
  - (b) at any time when summoned by the chairman or by three members of the Council,
 but shall, subject to the foregoing, have power to regulate the summoning of its meetings and the procedure at such meetings.
- (8) At any meeting of the Council six members shall be a quorum.
- (9) The functions of the Council shall be—
  - (a) to keep under general review the procedures and practices of the courts exercising criminal jurisdiction in Scotland (including any matters incidental or relating to those procedures or practices); and
  - (b) to consider and comment on any draft Act of Adjournal submitted to it by the High Court, which shall, in making the Act of Adjournal, take account to such extent as it considers appropriate of any comments made by the Council under this paragraph.
- (10) In the discharge of its functions under subsection (9) above the Council may invite representations on any aspect of the procedures and practices of the courts exercising criminal jurisdiction in Scotland (including any matters incidental or relating to those procedures or practices) and shall consider any such representations received by it, whether or not submitted in response to such an invitation.

### **305 Acts of Adjournal.**

- (1) The High Court may by Act of Adjournal—
  - (a) regulate the practice and procedure in relation to criminal procedure;
  - (b) make such rules and regulations as may be necessary or expedient to carry out the purposes and accomplish the objects of any enactment (including an enactment in this Act) in so far as it relates to criminal procedure;
  - (c) subject to subsection (5) below, to fix and regulate the fees payable in connection with summary criminal proceedings; and

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- (d) to make provision for the application of sums paid under section 220 of this Act and for any matter incidental thereto.
- (2) The High Court may by Act of Adjournal modify, amend or repeal any enactment (including an enactment in this Act) in so far as that enactment relates to matters with respect to which an Act of Adjournal may be made under subsection (1) above.
- (3) No rule, regulation or provision which affects the governor or any other officer of a prison shall be made by Act of Adjournal except with the consent of the Secretary of State.
- (4) The Clerk of Justiciary may, with the sanction of the Lord Justice General and the Lord Justice Clerk, vary the forms set out in an Act of Adjournal made under subsection (1) above or any other Act whether passed before or after this Act from time to time as may be found necessary for giving effect to the provisions of this Act relating to solemn procedure.
- (5) Nothing in paragraph (c) of subsection (1) above shall empower the High Court to make any regulation which the Secretary of State is empowered to make by the <sup>M1</sup>Courts of Law Fees (Scotland) Act 1895.

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

- C1** S. 305 modified (27.7.2001) by 2001 asp 7, s. 4, Sch. paras. 68, 77 (with Sch. para. 65); S.S.I. 2001/274, art. 3(1)(b)(c)(d)
- C2** S. 305 modified (27.7.2001) by 1993 c. 9, s. 10(2U) (as substituted by 2001 asp 7, s. 3(1)(b); S.S.I. 2001/274, art. 3(1)(a))
- C3** S. 305 modified (27.7.2001) by 2001 asp 7, s. 4, Sch. para. 21 (with Sch. para. 18); S.S.I. 2001/274, art. 3(1)(b)(c)

#### Marginal Citations

- M1** 58 & 59 Vict. c.14.

### 306 Information for financial and other purposes.

- (1) The Secretary of State shall in each year publish such information as he considers expedient for the purpose of—
- (a) enabling persons engaged in the administration of criminal justice to become aware of the financial implications of their decisions; or
  - (b) facilitating the performance by such persons of their duty to avoid discriminating against any persons on the ground of race or sex or any other improper ground.
- (2) Publication under subsection (1) above shall be effected in such manner as the Secretary of State considers appropriate for the purpose of bringing the information to the attention of the persons concerned.

### 307 Interpretation.

- (1) In this Act, unless the context otherwise requires—
- “appropriate court” means a court named as such in pursuance of section 228(4) of this Act or of Schedule 6 to this Act in a probation order

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or in an amendment of any such order made on a change of residence of a probationer;

“bail” means release of an accused or an appellant on conditions, or conditions imposed on bail, as the context requires;

“chartered psychologist” means a person for the time being listed in the British Psychological Society’s Register of Chartered Psychologists;

“child”, except in section 46(3) of and Schedule 1 to this Act, has the meaning assigned to that expression for the purposes of Chapters 2 and 3 of Part II of the <sup>M2</sup>Children (Scotland) Act 1995;

“children’s hearing” has the meaning assigned to it in Part II of the Children (Scotland) Act 1995;

“Clerk of Justiciary” shall include assistant clerk of justiciary and shall extend and apply to any person duly authorised to execute the duties of Clerk of Justiciary or assistant clerk of justiciary;

[<sup>F1</sup>“the Commission” has the meaning given by section 194A(1) of this Act;]

“commit for trial” means commit until liberation in due course of law;

“community service order” means an order made under section 238 of this Act;

“complaint” includes a copy of the complaint laid before the court;

“constable” has the same meaning as in the <sup>M3</sup>Police (Scotland) Act 1967;

“court of summary jurisdiction” means a court of summary criminal jurisdiction;

“court of summary criminal jurisdiction” includes the sheriff court and district court;

“crime” means any crime or offence at common law or under any Act of Parliament whether passed before or after this Act, and includes an attempt to commit any crime or offence;

[<sup>F2</sup>“devolution issue” has the same meaning as in Schedule 6 to the Scotland Act 1998;]

“diet” includes any continuation of a diet;

[<sup>F3</sup>“drug treatment and testing order” has the meaning assigned to it in section 234B(2) of this Act;]

“enactment” includes an enactment contained in a local Act and any order, regulation or other instrument having effect by virtue of an Act;

“examination of facts” means an examination of facts held under section 55 of this Act;

“existing” means existing immediately before the commencement of this Act;

“extract conviction” and “extract of previous conviction” include certified copy conviction, certificate of conviction, and any other document lawfully issued from any court of justice of the United Kingdom as evidence of a conviction [<sup>F4</sup>and also include a conviction extracted and issued as mentioned in section 286A(3)(a) and (b) of this Act];

“fine” includes—

- (a) any pecuniary penalty, (but not a pecuniary forfeiture or pecuniary compensation); and
- (b) an instalment of a fine;

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“governor” means, in relation to a contracted out prison within the meaning of section 106(4) of the <sup>M4</sup>Criminal Justice and Public Order Act 1994, the director of the prison;

“guardian”, in relation to a child, includes any person who, in the opinion of the court having cognizance of any case in relation to the child or in which the child is concerned, has for the time being the charge of or control over the child;

“guardianship order” has the meaning assigned to it by section 58 of this Act;

“High Court” and “Court of Justiciary” shall mean “High Court of Justiciary” and shall include any court held by the Lords Commissioners of Justiciary, or any of them;

“hospital” means—

- (a) any hospital vested in the Secretary of State under the <sup>M5</sup>National Health Service (Scotland) Act 1978;
- (aa) [<sup>F5</sup>any hospital managed by a National Health Service Trust established under section 12A of that Act;]
- (b) any private hospital [<sup>F6</sup>as defined in section 12(2)] of the <sup>M6</sup>Mental Health (Scotland) Act 1984; and
- (c) any State hospital;

[<sup>F7</sup>“hospital direction” has the meaning assigned to it by section 59A(1) of this Act;]

“hospital order” has the meaning assigned to it by section 58 of this Act;

“impose detention” or “impose imprisonment” means pass a sentence of detention or imprisonment, as the case may be, or make an order for committal in default of payment of any sum of money or for contempt of court;

“indictment” includes any indictment whether in the sheriff court or the High Court framed in the form set out in an Act of Adjournal or as nearly as may be in such form;

“judge”, in relation to solemn procedure, means a judge of a court of solemn criminal jurisdiction and, in relation to summary procedure, means any sheriff or any judge of a district court;

“justice” includes the sheriff and any stipendiary magistrate or justice of the peace;

“justice of the peace” means any of Her Majesty’s justices of the peace for any commission area in Scotland within such commission area;

“legalised police cells” has the like meaning as in the <sup>M7</sup>Prisons (Scotland) Act 1989;

“local authority” has the meaning assigned to it by section 1(2) of the <sup>M8</sup>Social Work (Scotland) Act 1968;

[<sup>F8</sup>“local probation board” means a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000]

“Lord Commissioner of Justiciary” includes Lord Justice General and Lord Justice Clerk;

“offence” means any act, attempt or omission punishable by law;

“officer of law” includes, in relation to the service and execution of any warrant, citation, petition, indictment, complaint, list of witnesses, order, notice, or other proceeding or document—

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- (a) any macer, messenger-at-arms, sheriff officer or other person having authority to execute a warrant of the court;
- (b) any constable;
- (ba) [<sup>F9</sup>any person commissioned by the Commissioners of Customs and Excise;]
- (c) any person who is employed [<sup>F10</sup>or appointed] under section 9 of the <sup>M9</sup>Police (Scotland) Act 1967 for the assistance of the constables of a police force and who [<sup>F11</sup>either] is authorised by the chief constable of that police force in relation to service and execution as mentioned above [<sup>F12</sup>or is a police custody and security officer] ;
- (d) where the person upon whom service or execution is effected is in prison at the time of service on him, any prison officer; and
- (e) any person or [<sup>F13</sup>class of persons] authorised in that regard for the time being by the Lord Advocate or by the Secretary of State;

“order” means any order, byelaw, rule or regulation having statutory authority;

“patient” means a person suffering or appearing to be suffering from mental disorder;

“place of safety”, in relation to a person not being a child, means any police station, prison or remand centre, or any hospital the board of management of which are willing temporarily to receive him, and in relation to a child means a place of safety within the meaning of Part II of the <sup>M10</sup>Children (Scotland) Act 1995;

[<sup>F14</sup>“postal operator” has the meaning assigned to it by section 125(1) of the Postal Services Act 2000.]

“the prescribed sum” has the meaning given by section 225(8) of this Act;

“prison” does not include a naval, military or air force prison;

“prison officer” and “officer of a prison” means, in relation to a contracted out prison within the meaning of section 106(4) of the <sup>M11</sup>Criminal Justice and Public Order Act 1994, a prisoner custody officer within the meaning of section 114(1) of that Act;

“probationer” means a person who is under supervision by virtue of a probation order or who was under such supervision at the time of the commission of any relevant offence or failure to comply with such order;

“probation order” has the meaning assigned to it by section 228 of this Act;

“probation period” means the period for which a probationer is placed under supervision by a probation order;

“procurator fiscal” means the procurator fiscal for a sheriff court district, and includes assistant procurator fiscal and procurator fiscal depute and any person duly authorised to execute the duties of the procurator fiscal;

“prosecutor”—

- (a) for the purposes of proceedings other than summary proceedings, includes Crown Counsel, procurator fiscal, any other person prosecuting in the public interest and any private prosecutor; and
- (b) for the purposes of summary proceedings, includes procurator fiscal, and any other person prosecuting in the public interest and complainant and any person duly authorised to represent or act for any public prosecutor;

“remand” means an order adjourning the proceedings or continuing the case and giving direction as to detention in custody or liberation during the

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period of adjournment or continuation and references to remanding a person or remanding in custody or on bail shall be construed accordingly;

“remand centre” has the like meaning as in the <sup>M12</sup>Prisons (Scotland) Act 1989;

“residential establishment” means an establishment within the meaning of that expression for the purposes of the <sup>M13</sup>Social Work (Scotland) Act 1968 or, as the case may be, of Part II of the <sup>M14</sup>Children (Scotland) Act 1995;

“responsible medical officer” has the meaning assigned to it by section 59 of the <sup>M15</sup>Mental Health (Scotland) Act 1984;

“restriction order” has the meaning assigned to it by section 59 of this Act;

“sentence”, whether of detention or of imprisonment, means a sentence passed in respect of a crime or offence and does not include an order for committal in default of payment of any sum of money or for contempt of court;

“sheriff clerk” includes sheriff clerk depute, and extends and applies to any person duly authorised to execute the duties of sheriff clerk;

“sheriff court district” extends to the limits within which the sheriff has jurisdiction in criminal matters whether by statute or at common law;

“State hospital” has the meaning assigned to it in Part VIII of the Mental Health (Scotland) Act 1984;

“statute” means any Act of Parliament, public general, local, or private, and any Provisional Order confirmed by Act of Parliament;

“supervision requirement” has the meaning assigned to it in Part II of the Children (Scotland) Act 1995;

“training school order” has the same meaning as in the Social Work (Scotland) Act 1968;

“witness” includes haver;

“young offenders institution” has the like meaning as in the <sup>M16</sup>Prisons (Scotland) Act 1989.

- (2) References in this Act to a court do not include references to a court-martial; and nothing in this Act shall be construed as affecting the punishment which may be awarded by a court-martial under the <sup>M17</sup>Naval Discipline Act 1957, the <sup>M18</sup>Army Act 1955 or the <sup>M19</sup>Air Force Act 1955 for a civil offence within the meaning of those Acts.
- (3) For the purposes of this Act, except section 228(6), where a probation order has been made on appeal, the order shall be deemed to have been made by the court from which the appeal was brought.
- (4) Any reference in this Act to a previous sentence of imprisonment shall be construed as including a reference to a previous sentence of penal servitude; any such reference to a previous sentence of Borstal training shall be construed as including a reference to a previous sentence of detention in a Borstal institution.
- (5) Any reference in this Act to a previous conviction or sentence shall be construed as a reference to a previous conviction by a court in any part of the United Kingdom and to a previous sentence passed by any such court<sup>F15</sup> except—
  - (a) where the context otherwise requires; and
  - (b) in sections 69(2) and 166, where such a reference includes a reference to a previous conviction, by a court in another member State of the European Union, of an act punishable under the law in force in that State (an act so punishable being taken to constitute an offence under that law however described in that law)]

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- (6) References in this Act to an offence punishable with imprisonment shall be construed, in relation to any offender, without regard to any prohibition or restriction imposed by or under any enactment, including this Act, upon the imprisonment of offenders of his age.
- (7) Without prejudice to section 46 of this Act, where the age of any person at any time is material for the purposes of any provision of this Act regulating the powers of a court, his age at the material time shall be deemed to be or to have been that which appears to the court, after considering any available evidence, to be or to have been his age at that time.
- (8) References in this Act to findings of guilty and findings that an offence has been committed shall be construed as including references to pleas of guilty and admissions that an offence has been committed.

#### Textual Amendments

- F1** Definition in s. 307(1) inserted (1.4.1999) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(34)(a)**; S.I. 1999/652, art. 2, **Sch.** (subject to savings and transitional provisions in art. 3)
- F2** Definition in s. 307(1) inserted (20.5.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 32(3)** (with s. 126-(3)-(11)); S.I. 1998/3178, art. 2(2), **Sch. 4**
- F3** Definition in s. 307(1) inserted (30.9.1998) by 1998 c. 37, s. 95(2); S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)
- F4** S. 307(1): words in the definition of "extract conviction" and "extract of previous conviction" added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 57(5)(a), 89; S.S.I. 2003/288, art. 2, Sch.
- F5** S. 307(1): para. (aa) in definition of "hospital" inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(34)(b)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)
- F6** Words in s. 307(1) substituted (1.10.2001) by 2001 asp 8, s. 79, **Sch. 3 para. 20**; S.S.I. 2001/304, art. 2(1)(b)(d)
- F7** Definition in s. 307(1) inserted (1.1.1998) by 1997 c. 48, s. 6(5); S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)
- F8** S. 307(1): definition of "local probation board" inserted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 para. 126**; S.I. 2001/919, art. 2(f)(ii)
- F9** S. 307(1): para. (ba) in the definition of "officer of law" inserted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 124(a)**; S.I. 1998/2327, art. 2(1)(y)(2)(kk) (subject to arts. 5-8)
- F10** S. 307(1): words in the definition of "officer of law" inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 76(11)(a), 89; S.S.I. 2003/288, art. 2, Sch.
- F11** S. 307(1): words in the definition of "officer of law" inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 76(11)(b), 89; S.S.I. 2003/288, art. 2, Sch.
- F12** S. 307(1): words in the definition of "officer of law" added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 76(11)(c), 89; S.S.I. 2003/288, art. 2, Sch.
- F13** S. 307(1): words in para. (e) of the definition of "officer of law" substituted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 124(b)**; S.I. 1998/2327, arts. 2(1)(y)(2)(kk) (subject to arts. 5-8)
- F14** Words in s. 307(1) inserted (26.3.2001) by S.I. 2001/1149, s. 3(1), **Sch. para. 104(7)** (subject to art. 1(3))
- F15** S. 307(5)(a)(b) and preceding word added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 57(5)(b), 89; S.S.I. 2003/288, art. 2, Sch.

#### Marginal Citations

- M2** 1995 c.36.  
**M3** 1967 c.77.



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<b>M4</b>	1994 c.33.
<b>M5</b>	1978 c.29.
<b>M6</b>	1984 c.36.
<b>M7</b>	1989 c.45.
<b>M8</b>	1968 c.49.
<b>M9</b>	1967 c.77.
<b>M10</b>	1995 c.36.
<b>M11</b>	1994 c.33.
<b>M12</b>	1989 c.45.
<b>M13</b>	1968 c.49.
<b>M14</b>	1995 c.36.
<b>M15</b>	1984 c.36.
<b>M16</b>	1989 c.45.
<b>M17</b>	1957 c.53.
<b>M18</b>	1955 c.18.
<b>M19</b>	1955 c.19.

### 308 Construction of enactments referring to detention etc.

In any enactment—

- (a) any reference to a sentence of imprisonment as including a reference to a sentence of any other form of detention shall be construed as including a reference to a sentence of detention under section 207 of this Act; and
- (b) any reference to imprisonment as including any other form of detention shall be construed as including a reference to detention under that section.

VALID FROM 10/12/2007

#### [<sup>F16</sup>308A Expressions relating to electronic proceedings

- (1) In this Act, an “electronic complaint” is a complaint in electronic form which is capable of being—
  - (a) transmitted by means of electronic communication;
  - (b) kept in legible form.
- (2) In this Act, unless the context otherwise requires—
 

“electronic communication” is to be construed in accordance with section 15(1) of the Electronic Communications Act 2000 (c. 7);

“electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000, but includes a version of an electronic signature which is reproduced on a paper document.
- (3) The Scottish Ministers may by order modify the meaning of “electronic signature” provided for in subsection (2) above for the purpose of such provisions of this Act as are specified in the order.
- (4) An order under subsection (3) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.]

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### Textual Amendments

**F16** S. 308A inserted (S.) (10.12.2007 for certain purposes and otherwise prosp.) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 41(2)**, 84; [S.S.I. 2007/479](#), **art. 3(1)**, Sch. (as amended by [S.S.I. 2007/527](#))

### 309 Short title, commencement and extent.

- (1) This Act may be cited as the Criminal Procedure (Scotland) Act 1995.
- (2) This Act shall come into force on 1 April 1996.
- (3) Subject to subsections (4) and (5) below, this Act extends to Scotland only.
- (4) The following provisions of this Act and this section extend to England and Wales—
  - section 44;
  - section 47;
  - section 209(3) and (7);
  - section 234(4) to (11);
  - section 244;
  - section 252 for the purposes of the construction mentioned in subsection (1) of that subsection;
  - section 303(4).
- (5) The following provisions of this Act and this section extend to Northern Ireland—
  - section 44;
  - section 47;
  - section 244;
  - section 252 for the purposes of the construction mentioned in subsection (1) of that subsection;
  - section 303(4).
- (6) Section 297(3) and (4) of this Act and this section also extend to the Isle of Man.

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