



# Criminal Justice (Scotland) Act 1949

## 1949 CHAPTER 94

### PART I

#### POWERS AND PROCEEDINGS OF COURTS

*Miscellaneous provisions relating to jurisdiction, procedure, appeals, etc.*

#### **29 Jurisdiction and procedure in respect of certain indictable offences committed abroad**

- (1) Any British subject who in a country outside the United Kingdom does any act or makes any omission which if done or made in Scotland would constitute the crime of murder or of culpable homicide shall be guilty of the same crime and subject to the same punishment as if the act or omission had been done or made in Scotland.
- (2) Any British subject employed under His Majesty's Government in the United Kingdom in the service of the Crown who, in a foreign country, when acting or purporting to act in the course of his employment, does any act or makes any omission which if done or made in Scotland would constitute an offence punishable on indictment shall be guilty of the same offence, and subject to the same punishment, as if the act or omission had been done or made in Scotland.
- (3) A person may be proceeded against, indicted, tried and punished for an offence under this section in any county or place in Scotland in which he is apprehended or is in custody as if the offence had been committed in that county or place; and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in that county or place.

#### **30 Amendment of Criminal Appeal (Scotland) Act, 1926**

- (1) For subsection (4) of section nine of the Criminal Appeal (Scotland) Act, 1926, there shall be substituted the following subsection—

“(4) —

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- (a) The time during which an appellant, after admission to bail under this section, is at large pending the determination of his appeal shall not be reckoned as part of any term of imprisonment under his sentence;
  - (b) The time during which an appellant is in custody pending the determination of his appeal shall, subject to any direction which the Court may give to the contrary, be reckoned as part of any term of imprisonment under his sentence;
  - (c) Imprisonment under the sentence of an appellant shall, subject to any direction which the Court may give to the contrary, be deemed to run, if the appellant is in custody, as from the date on which the sentence was passed by the court of trial, and to begin to run or to be resumed, if the appellant is not in custody, as from the date on which he is received into prison under the sentence;
  - (d) In this subsection references to a prison and imprisonment shall include respectively references to a Borstal institution, detention centre or remand home and to detention in such institution, centre or home, and any reference to a sentence shall be construed as a reference to a sentence passed by the court of trial or by the Court on appeal as the case may require.”
- (2) The power of the Secretary of State under section sixteen of the said Act to refer to the High Court of Justiciary the case, or any point arising on the case, of a person convicted on indictment, shall be exercisable whether or not that person has petitioned for the exercise of His Majesty's mercy.

### **31 Art and part guilt of statutory offence**

For the removal of doubts it is hereby declared that a person may be convicted of, and punished for, a contravention of any statute or order, notwithstanding that he was guilty of such contravention as art and part only.

### **32 Provision for death or illness of judge presiding at trial on indictment**

- (1) Where at any sitting of the High Court of Justiciary or of the sheriff court for the trial of cases on indictment, the court is unable to proceed owing to the death or illness of the presiding judge, it shall be lawful for the clerk of court—
- (a) in the case where the diet has not been called, to convene the court and adjourn that diet and any other diet appointed for that sitting to a later sitting;
  - (b) in the case where the diet has been called but no evidence has been led, to adjourn the diet or any other diet appointed for that sitting to a later sitting; and
  - (c) where evidence has been led, to desert the diet pro loco et tempore and to discharge the jury ;
- and any such continuation, adjournment, desertion or other proceeding shall be entered in the record by the clerk of court.
- (2) Where a diet is deserted in pursuance of paragraph (c) of the last foregoing subsection it shall be lawful for the Lord Advocate to raise and insist in a new indictment, and in any such case where the accused is in custody it shall not be necessary that a new warrant for his incarceration be granted, and the warrant of commitment on which he is at the time in custody till liberation in due course of law shall continue in force, and in any such case where the accused is at liberty on bail his bail shall continue in force.

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### **33 Instructions by Lord Advocate as to reporting offences**

The Lord Advocate may from time to time issue instructions to a chief constable or to chief constables with regard to the reporting, for consideration of the question of prosecution, of offences alleged to have been committed within the area or areas of such chief constable or chief constables, and it shall be the duty of a chief constable to whom any such instruction is issued to secure compliance therewith.

### **34 Proof of exceptions, qualifications, etc., in proceedings on indictment**

The provisions of paragraphs (3) and (5) of section nineteen of the Summary Jurisdiction (Scotland) Act, 1908 (which relate respectively to the proof of exceptions, etc., and of qualifications necessary to the commission of an offence) shall apply to procedure under indictment in like manner as they apply to summary procedure and accordingly paragraph (4) of section seventy-seven of the said Act shall have effect as if for the words " Sections ten " there were substituted the words Section ten, paragraphs (3) and (5) of section nineteen, section ".

### **35 Proof as to productions in proceedings on indictment**

Where, in any proceedings on indictment, a person who has examined a production is adduced to give evidence with regard thereto and the production has been lodged at least eight days before the second diet, it shall not be necessary to prove that the production was received by him in the condition in which it was taken possession of by the procurator fiscal or the police and returned by him after his examination of it to the procurator fiscal or the police unless the accused, at least four days before the second diet gives to the Crown Agent, where he is cited to the High Court of Justiciary for the second diet, or to the procurator fiscal of the district to the court of which he is cited for the second diet, where the case is to be tried in the sheriff court, written notice that he does not admit that the production was received or returned as aforesaid.

### **36 Imprisonment for non-payment of fines imposed on conviction on indictment**

Section seventy-seven of the Summary Jurisdiction (Scotland) Act, 1908, in so far as it directs that section forty-eight thereof shall apply to procedure under indictment shall cease to have effect and the maximum period of imprisonment that may be imposed in default of the payment of a fine imposed on conviction on indictment shall be as follows:—

<i>Amount of Fine.</i>	<i>Period of Imprisonment.</i>
Not exceeding twenty pounds	Three months.
Exceeding twenty but not exceeding one hundred pounds	Four months.
Exceeding one hundred but not exceeding five hundred pounds	Six months.
Exceeding five hundred pounds	Twelve months.

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### **37 Payment by instalments of fines imposed on conviction on indictment**

- (1) Where a court imposes a fine on a person convicted on indictment, the court may, either at the same or at any subsequent time, order payment of the fine by instalments of such amounts, and at such times, as it may think fit, and where any instalment is not paid at the time so ordered, that person shall be liable to imprisonment for such period as bears to the period specified in default of payment of the fine the same proportion, as nearly as may be, as the sum of the unpaid instalments bears to the total amount of the fine.
- (2) Where in pursuance of the last foregoing subsection a person is imprisoned in default of payment of any instalment of a fine, and there is paid to the governor of the prison in which the said person is imprisoned a sum in part satisfaction of the sum of the unpaid instalments of the said fine, the term of imprisonment of the said person shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which he was sentenced as the sum so paid bears to the sum for which he is liable.
- (3) Where a court has imposed a fine on a person convicted on indictment and has ordered payment of the fine by instalments in accordance with the terms of subsection (1) of this section, the court may at any time before imprisonment has followed on the sentence, without requiring the attendance of the accused, reduce the amount, or allow further time for the payment, of any instalment (whether the time for payment thereof has or has not expired), or order payment of the fine, so far as unpaid, by instalments of smaller amounts or at longer intervals than originally ordered.
- (4) The High Court of Justiciary may by Act of Adjourn regulate the procedure to be followed in cases arising under this section.

### **38 Amendment of Criminal Procedure (Scotland) Act, 1887, s. 59**

The power conferred by section fifty-nine of the Criminal Procedure (Scotland) Act, 1887, both as originally enacted, and as applied to summary proceedings by section five of and Schedule B to the Summary Jurisdiction (Scotland) Act, 1908, to convict a person of an offence other than that with which he is charged in an indictment or complaint shall be exercisable by the sheriff court before which such person is tried notwithstanding that that other offence was committed outside the jurisdiction of that sheriff court.

### **39 Previous convictions in proceedings on indictment**

- (1) The following provisions shall have effect with regard to previous convictions of persons proceeded against on indictment—
  - (a) No mention shall be made in the indictment of previous convictions, nor shall extracts of previous convictions be included in the list of productions annexed to the indictment;
  - (b) If the prosecutor desires to place before the court any previous conviction as an aggravation of any charge contained in the indictment, he shall cause to be served on the accused with the indictment a notice in the form as nearly as may be of Form No. 1 of the Seventh Schedule to this Act and any conviction set forth in that notice shall be held to apply to the accused unless he gives, in accordance with the next succeeding paragraph, written intimation objecting

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- to such conviction on the ground that it does not apply to him or is otherwise inadmissible;
- (c) Where the accused pleads not guilty at the first diet intimation objecting to a conviction under the last foregoing paragraph shall be given, at least five clear days before the second diet, to the Crown Agent, where the accused is cited to the High Court of Justiciary for the second diet, or to the procurator fiscal of the district to the court of which the accused is cited for the second diet where the case is to be tried in the sheriff court; and where the accused pleads guilty at the first diet, no objection to any such conviction shall be entertained unless the accused has given at least two clear days before that diet intimation to the procurator fiscal of the district to the court of which the accused is cited for that diet;
  - (d) Where notice is given by the accused under section thirty-one of the Criminal Procedure (Scotland) Act, 1887, of his intention to plead guilty and the prosecutor desires to place before the court any previous conviction as an aggravation of the charge, he shall cause to be served on the accused with the indictment a notice in the form as nearly as may be of Form No. I of the Seventh Schedule to this Act, and any conviction set forth in that notice shall be held to apply to the accused unless within two days after service of the notice he gives to the procurator fiscal written intimation objecting to such conviction on the ground that it does not apply to him or is otherwise inadmissible;
  - (e) Previous convictions shall not be laid before the presiding judge until the prosecutor moves for sentence, and in that event the prosecutor shall lay before the judge a copy of the notice referred to in paragraph (b) or paragraph (d) of this subsection;
  - (f) Where any such intimation as aforesaid is given it shall be competent to prove any previous conviction included therein in the manner set forth in section sixty-six of the Criminal Procedure (Scotland) Act, 1887, and the provisions of the said section shall apply accordingly.
- (2) Any conviction which is admitted in evidence by the court under the last foregoing subsection shall be entered in the record of the trial.
- (3) Nothing herein contained shall prevent evidence of previous convictions being led in any case where such evidence is competent in support of a substantive charge.

#### **40 Proceedings on indictment against bodies corporate**

- (1) In any proceedings on indictment against a body corporate the indictment may be served by delivery of a copy of the indictment with notice to appear attached thereto at the registered office or, if there is no registered office or the registered office is not in the United Kingdom, at the principal place of business in the United Kingdom of the body corporate.

Where a registered letter containing a copy of the indictment has been sent by post to the registered office or principal place of business of the body corporate, an acknowledgment or certificate of the delivery of the letter issued by the Postmaster-General in pursuance of regulations under the Post Office Act, 1908, shall be sufficient evidence of the delivery of the letter at the registered office or place of business on the day specified in such acknowledgment or certificate.

- (2) In any such proceedings as aforesaid the body corporate may, for the purpose of—

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- (a) stating objections to the competency or relevancy of the indictment or proceedings; or
  - (b) tendering a plea of guilty or not guilty; or
  - (c) making a statement in mitigation of sentence;
- appear by a representative of the body corporate.
- (3) Where at the first diet in any such proceedings as aforesaid the body corporate does not appear or tender any plea in accordance with the provisions of the last foregoing subsection, or by counsel or a solicitor, it shall be deemed to have tendered a plea of not guilty.
  - (4) Where at the second diet in any such proceedings as aforesaid the body corporate does not appear in accordance with the provisions of subsection (2) of this section, or by counsel or a solicitor, the court shall, on the motion of the prosecutor, if it is satisfied that the provisions of subsection (1) of this section have been complied with, proceed to hear and dispose of the case in the absence of the body corporate.
  - (5) Where in any such proceedings as aforesaid a body corporate is sentenced to a fine, the fine may be recovered in like manner in all respects as if a copy of the sentence certified by the clerk of the court were an extract decree of the Court of Session for the payment of the amount of the fine by the body corporate to the King's and Lord Treasurer's Remembrancer.
  - (6) Nothing contained in sections twenty-eight or twenty-nine of the Criminal Procedure (Scotland) Act, 1887, shall require a plea tendered by or on behalf of a company to be signed.
  - (7) If on the application of the procurator fiscal, a sheriff is satisfied that there is reasonable ground for suspecting that an offence has been or is being committed by a body corporate, the sheriff shall have the like power to grant warrant for the citation of witnesses and the production of documents and articles as he would have if a petition charging an individual with the commission of the offence were presented to him.
  - (8) In this section, the expression "representative" in relation to a body corporate against which such proceedings as aforesaid are brought, means an officer or servant of the body corporate duly appointed by it for the purpose of those proceedings. Such appointment need not be under the seal of the body corporate, and a statement in writing purporting to be signed by the managing director of, or by any person having or being one of the persons having the management of the affairs of the body corporate, to the effect that the person named in the statement has been appointed the representative of the body corporate for the purpose of the said proceedings shall be admissible without further proof as evidence that the person has been appointed.

#### **41 Alteration of diet in indictment and in summary proceedings**

- (1) Where in any proceedings on indictment the second diet in which is to be in the sheriff court the indictment is not brought to trial at that diet and a warrant has been issued by the sheriff clerk under section twenty-three of the Criminal Procedure (Scotland) Act, 1887, for a subsequent sitting of the court on a day within one month after the date of the aforesaid second diet, it shall be lawful for the court to adjourn that diet to the subsequent sitting, and the warrant shall have effect as if the second diet had been originally fixed for the date of such subsequent sitting.

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- (2) Where a diet has been fixed for the trial of any summary complaint, and the parties desire that the complaint should be disposed of at an earlier or a later diet, the court may on a joint application in writing by the parties or their solicitors discharge the diet so fixed and fix in lieu thereof an earlier or a later diet.

#### **42 Amendment of False Oaths (Scotland) Act, 1933**

- (1) Section two of the False Oaths (Scotland) Act, 1933 (which penalises certain false statements) shall apply in like manner as it applies to the statements therein mentioned to any oral statement made for the purpose of any entry in a register kept in pursuance of any Act of Parliament.
- (2) Any proceedings under the Summary Jurisdiction (Scotland) Act, 1908, for an offence against the False Oaths (Scotland) Act, 1933, may, notwithstanding anything in the first mentioned Act, be commenced at any time within one year from the date of the commission of the offence, or within three months from the date when evidence sufficient in the opinion of the Lord Advocate to justify the proceedings comes to his knowledge whichever period last expires; and for the purposes of this subsection a certificate purporting to be signed by or on behalf of the Lord Advocate as to the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence thereof.

#### **43 Summary prosecution of uttering forged document**

For the removal of doubt it is hereby declared that it is competent to prosecute summarily in the sheriff court the crime of uttering a forged document.

#### **44 Power of court to refund bail**

Where any court has made an order for the forfeiture of bail it shall be competent for the court, if it is satisfied that it is reasonable in all the circumstances to do so, to recall the order and direct that the bail money forfeited shall be refunded. Any decision of a court under this section shall be final and not subject to review.

#### **45 Bail in summary proceedings**

Sections five, six and seven of the Bail (Scotland) Act, 1888 (which relate to applications for bail and to appeals against decisions in such applications) shall, with any necessary modifications, apply to an application for bail by a person charged with an offence on complaint under the Summary Jurisdiction (Scotland) Act, 1908, in like manner as those sections apply to an application for bail by a person committed until liberation in due course of law.

#### **46 Previous convictions in summary proceedings**

- (1) Section eighteen of and Schedule C to the Summary Jurisdiction (Scotland) Act, 1908, in so far as they require a statutory charge included in a summary complaint to specify the enactment fixing the penalty or to set forth the penalty, shall cease to have effect.
- (2) Section thirty-four of the said Act, in so far as it requires previous convictions to be set forth in a summary complaint, shall cease to have effect and no such previous conviction shall be laid before the judge in any proceedings on such complaint until

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the judge is satisfied that the charge is proved, and in that event the prosecutor shall lay before the judge a copy of any notice served on the accused in accordance with subsection (3) or subsection (4) of this section.

- (3) Where a summary complaint includes any statutory charge notice in the form as nearly as may be of Form No. 2 of the Seventh Schedule to this Act 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.
- (4) Where the accused in any summary proceedings has been previously convicted of any offence forming an aggravation of any offence libelled in the complaint a notice in the form as nearly as may be of Form No. 3 or Form No. 4 of the Seventh Schedule to this Act 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.
- (5) A copy of any notice served on an accused under this section shall be entered in the record or minutes of the proceedings.
- (6) Nothing herein contained shall prevent evidence of previous convictions being led in any case where such evidence is competent in support of a substantive charge.

#### **47 Exercise of power conferred on prosecutor by the Summary Jurisdiction (Scotland) Act, 1908**

- (1) The power conferred by section seventy-three of the Summary Jurisdiction (Scotland) Act, 1908, on the prosecutor in a summary prosecution to consent to a conviction and sentence appealed against being set aside shall be exercisable, where the appeal is by stated case, at any time within ten days after the receipt by the prosecutor of the draft stated case and, where the appeal is by suspension, at any time within ten days after the service on the prosecutor of the bill of suspension.
- (2) The limit on the amount of the expenses that may be awarded to an appellant under the said section shall be increased from three guineas to five guineas.

#### **48 Appeal where trial judge unable to state case**

Where a person convicted under the Summary Jurisdiction (Scotland) Act, 1908, has made application thereunder for a stated case, and the judge by whom he was convicted dies before signing the case or is precluded by illness or other cause from so doing, it shall be competent for such person to present a bill of suspension to the High Court of Justiciary and to bring under the review of that Court any matter which might have been so brought under review by stated case.

#### **49 Amendment of Summary Jurisdiction (Scotland) Act, 1908**

For sections sixty-five, sixty-six and sixty-seven of the Summary Jurisdiction (Scotland) Act, 1908, there shall be substituted the following sections:—

- (1) Within one month after receipt of the draft case under the last foregoing section each party shall cause to be transmitted to the judge against whose judgment the appeal is taken and to the other parties a note of any adjustments he desires to have made on the draft case or intimate that he has no such adjustments to suggest, and if the appellant fails so to do he shall be deemed to have abandoned



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his appeal, and in any such case the court shall have the like power to grant warrant for his apprehension and imprisonment as is conferred by section sixty-three of this Act.

- (2) Within fourteen days after receipt of any such adjustments or intimation as aforesaid the judge against whose judgment the appeal is taken shall (unless the appellant is deemed to have abandoned his appeal), after considering any such adjustments state and sign the case.

As soon as the case shall be signed by the judge against whose judgment the appeal is taken the clerk of court shall send it to the appellant and transmit the complaint, productions and any other proceedings in the cause to the clerk of justiciary.

- (1) The appellant shall within five days after receiving the case send a copy of it to the respondent and cause it to be transmitted to or lodged with the clerk of justiciary together with a certificate by himself or his agent that a copy has been sent to the respondent in accordance with the requirement hereinbefore contained.
- (2) If the appellant fails to comply with the last foregoing subsection he shall be deemed to have abandoned his appeal, and the court shall have the like power to grant warrant for his apprehension and imprisonment as is conferred by section sixty-three of this Act.”