1964 No. 249 (S. 20)

SUMMARY JURISDICTION, SCOTLAND

Act of Adjournal (Summary Procedure) 1964

Made - - - - *6th February* 1964
Coming into Operation *2nd March* 1964

At Edinburgh, the Sixth day of February, Nineteen hundred and sixty-four

Present—

THE RIGHT HONOURABLE THE LORD JUSTICE-GENERAL
THE RIGHT HONOURABLE THE LORD JUSTICE-CLERK
THE HONOURABLE LORD CARMONT
THE HONOURABLE LORD STRACHAN
THE HONOURABLE LORD GUTHRIE
THE HONOURABLE LORD MIGDALE
THE RIGHT HONOURABLE LORD WHEATLEY
THE HONOURABLE LORD WALKER
THE HONOURABLE LORD CAMERON

The Lord Justice-General, Lord Justice-Clerk and Lords Commissioners of Justiciary, by virtue of the powers conferred upon them by section 76 of the Summary Jurisdiction (Scotland) Act 1954(a) as amended(b), and of all other powers competent to them in that behalf, do hereby enact as follows :—

1. The Act of Adjournal relative to the Criminal Justice Administration Act 1914 (4 & 5 Geo. 5. c. 58)(c) and the Act of Adjournal relative to the Criminal Procedure (Scotland) Act 1938 (1 & 2 Geo. 6. c. 48)(d) are hereby repealed.

2.—(1) The citation of the accused and witnesses in a summary prosecution to any ordinary sitting of a summary court or to any special diet fixed by a summary court or to any adjourned sitting or diet of such court shall be effected as provided in this section.

(2) It shall be deemed a legal citation of the accused or a witness to such a sitting or diet or adjourned sitting or diet as is mentioned in the last foregoing subsection :—

(*a*) if the citation be delivered to him personally or left for him at his dwelling-house or place of business with some person resident or employed therein, or where he has no known dwelling-house or place of business, at any other place in which he may at the time be resident, or

(a) 2 & 3 Eliz. 2. c. 48. (b) 1963 c. 39. (c) S.R. & O. 1915/250 (Rev. XI, p. 515: 1915 I, p. 346).
(d) S.R. & O. 1938/1453 (Rev. XI, p. 549: 1938 I, p. 1603).

(*b*) where the accused or witness is the master of, or a seaman or person employed in, a vessel, if the citation is left with a person on board thereof and connected therewith, or

(*c*) where the accused is a company, association or corporation, if the citation is left at their ordinary place of business with a partner, director, secretary or other official, or if the company, association or corporation is cited in the same manner as if the proceedings were in a civil court, or

(*d*) where the accused is a body of trustees, if the citation is left with any one of them who is resident in Scotland or with their known solicitor in Scotland.

(3) It shall be deemed a legal citation of the accused to such a sitting or diet or adjourned sitting or diet as is mentioned in subsection (1) hereof, if the citation be signed by the prosecutor and sent by post in a registered envelope or through the recorded delivery service to the dwelling-house or place of business of such accused, or, if he has no known dwelling-house or place of business, to any other place in which he may at the time be resident:

Provided that, if the accused shall fail to appear at a diet or sitting or adjourned diet or sitting to which he has been cited in the manner provided by this subsection, paragraphs (*b*) and (*c*) of section 30 of the Summary Jurisdiction (Scotland) Act 1954 as amended, shall not apply unless it shall have been proved to the court that he received the citation or that the contents thereof came to his knowledge.

(4) The production in court of any letter or other communication purporting to be written by or on behalf of an accused who has been cited in the manner provided in subsection (3) hereof in such terms as to infer that the contents of such citation came to his knowledge, shall be admissible as evidence of that fact for the purposes of the proviso to that subsection.

3. The citation of a probationer to appear before a court of summary jurisdiction in terms of section 5(1) or section 6(1) of the Criminal Justice (Scotland) Act 1949(a) shall be effected in like manner, *mutatis mutandis*, as the citation of an accused to a sitting or diet of a summary court.

4.—(1) The citation of an offender to appear before a court of summary jurisdiction in terms of section 43(2)(*a*) of the Summary Jurisdiction (Scotland) Act 1954 as amended, shall be effected in like manner, *mutatis mutandis*, as the citation of an accused to a sitting or diet of a summary court:

Provided that the citation shall be signed by the clerk of the court before which the offender is required to appear, instead of by the prosecutor and provided also that the forms contained in Part IV of the second schedule to the Summary Jurisdiction (Scotland) Act 1954 shall not apply to such citation.

(2) The citation of such an offender shall be in the form, as nearly as may be, of Form 1 contained in the Schedule hereto.

(3) If the citation of such an offender shall have been effected by an officer of law, the written execution, if any, of that officer of law shall be in the form, as nearly as may be, of Form 2 contained in the Schedule hereto.

5.—(1) When the citation of any person other than a witness is effected by post in terms of any of the preceding sections hereof, the *induciae* shall be reckoned from twenty-four hours after the time of posting.

(a) 12, 13 & 14 Geo. 6. c. 94.

(2) It shall be sufficient evidence that a citation has been sent by post in terms of any of the preceding sections hereof, if there is produced in court a written execution, signed by the person who signed such citation and in the form, as nearly as may be, of Form 3 contained in the Schedule hereto, together with the post office receipt for the relative registered or recorded delivery letter.

6.—(1) A warrant of apprehension issued by a court of summary jurisdiction in terms of section 43(2) of the Summary Jurisdiction (Scotland) Act 1954 as amended, shall be in the form, as nearly as may be, of Form 4 contained in the Schedule hereto.

(2) The Minute of procedure in relation to an enquiry into the means of an offender under section 43 of the Summary Jurisdiction (Scotland) Act 1954 as amended, shall be in the form, as nearly as may be, of Form 5 contained in the Schedule hereto.

7.—(1) When a court of summary jurisdiction shall have made an order in terms of section 43B(1) of the Summary Jurisdiction (Scotland) Act 1954 as amended, placing an offender under the supervision of another person, a notice shall be sent by the clerk of the court to such offender in the form, as nearly as may be, of Form 6 contained in the Schedule hereto.

(2) The person appointed to supervise such an offender shall communicate with him with a view to assisting and advising him in regard to payment of the fine, and unless the same or any instalment thereof shall have been paid to the clerk of the court within the time allowed by the court for payment, the person so appointed shall report to the court without delay after the expiry of such time, as to the conduct and means of the offender.

8.—(1) When a court of summary jurisdiction which has adjudged that a sum of money shall be paid by an offender, shall consider that any money found on the offender on apprehension or after he has been searched by order of the court, should not be applied towards payment of such sum, the court shall make a direction in writing to that effect which shall be written on the extract of the sentence which imposes the fine, before the same is issued by the clerk of the court.

(2) An accused may make an application to such a court either orally or in writing, through the governor of the prison in whose custody he may be at the time, that any sum of money which shall have been found on his person should not be applied in payment of the fine adjudged to be paid by him.

(3) A person who alleges that any money found on the person of an offender is not the property of the offender, but belongs to such person, may apply to such court either orally or in writing for a direction that such money should not be applied in payment of the fine adjudged to be paid, and the court after enquiry may so direct.

(4) A court of summary jurisdiction which has adjudged that a sum of money shall be paid by an offender, may order the attendance in court of the offender if he is in prison, for the purpose of ascertaining the ownership of money which shall have been found on his person.

(5) A notice in the form, as nearly as may be, of Form 7 contained in the Schedule hereto, addressed to the governor of the prison in whose custody an offender may be at the time, signed by the judge of a court of summary jurisdiction shall be a sufficient warrant to the governor of such prison for conveying the offender to the court.

9. In all cases where time is not allowed by a court of summary jurisdiction for payment of a fine, the reasons of the court for not so allowing time shall be stated in the extract of the finding and sentence as well as in the finding and sentence itself.

10.—(1) Where a court of summary jurisdiction makes a transfer of fine order under section 44 of the Summary Jurisdiction (Scotland) Act 1954 as amended, the clerk of the court shall send to the clerk of the court specified in the order a notice in the form, as nearly as may be, of Form 8 or Form 9 contained in the Schedule hereto, or in the case of a further transfer of fine order, of Form 10 contained in the Schedule hereto, and shall at the same time send to that clerk a statement of the offence of which the offender was convicted, and of the steps if any which shall have been taken to recover the fine, and shall give him such further information if any as, in his opinion, is likely to assist the court specified in the order in recovering the fine.

(2) In the case of a further transfer of fine order the clerk of the court which shall have made the order shall send to the clerk of the court by which the fine was imposed a copy of the notice which shall have been sent to the clerk of the court specified in the order.

(3) The clerk of the court specified in a transfer of fine order shall, as soon as may be after he has received the notice prescribed in subsection (1) above, send an intimation to the offender in the form, as nearly as may be, of Form 11 contained in the Schedule hereto.

(4) The clerk of the court specified in a transfer of fine order shall remit or otherwise account for any payment received in respect of the fine, to the clerk of the court by which the fine was imposed, and if the sentence shall have been enforced otherwise than by payment of the fine, he shall inform the clerk of that court how the sentence was enforced.

11.—(1) An application by an offender for further time in which to pay a fine adjudged to be paid by him by a court of summary jurisdiction, or of instalments thereof, shall be made to that court, except in a case where a transfer of fine order shall have been made under section 44 of the Summary Jurisdiction (Scotland) Act 1954 as amended, or under section 72A of the Magistrates' Courts Act 1952(a) as amended(b), in which case the application shall be made to the court specified in the transfer order, or to the court specified in the last transfer order where there is more than one transfer.

(2) A court to which an application is made under the last foregoing subsection shall allow further time for payment of the fine or of instalments thereof, unless it is satisfied that the failure of the offender to make payment has been wilful or that the offender has no reasonable prospect of being able to pay if further time is allowed.

(3) An application made under this section to a court of summary jurisdiction in Scotland may be made orally or in writing.

12. The Second Schedule to the Summary Jurisdiction (Scotland) Act 1954 shall be amended as follows:—

(1) In Part IV by adding after the words "police constable" occurring at the end of the form for citing an accused, the words ("*or* Prosecutor)".

(a) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 55.

(b) 1963 c. 39.

(2) In Part V by deleting the forms from the words "Fined £.....; (*or* £..... each)" which occur opposite the marginal note "Fine" to the words "months thereafter, and in default ..... days' imprisonment further", which occur opposite the marginal note "Imprisonment and caution", together with the relative marginal notes, and by substituting therefor the following forms and relative marginal notes :—

Fine, time allowed	Fined £....., (*or* £..... each), ... days allowed for payment.
	or
Fine, imprisonment imposed for future default	Fined £....., (*or* £..... each), ... days allowed for payment. For the reason stated below ..... days' imprisonment (*or* ..... days' imprisonment each) imposed in default of payment within time allowed. (*Here state reason*)
	or
Fine, no time to pay	Fined £....., (*or* £..... each), and in default of payment .... days' imprisonment. For the reason stated below, no time allowed for payment (*Here state reason*)
	or
Caution	To find £..... caution for good behaviour, ... days allowed for finding such caution.

13. The forms in the Schedule annexed hereto shall be in supplement of the forms contained in the Second Schedule to the Summary Jurisdiction (Scotland) Act 1954, and may be used with such variations as circumstances may require for the purposes of the foresaid Act or, so far as they relate to summary jurisdiction or procedure, of the Criminal Justice (Scotland) Act 1949 or the Criminal Justice (Scotland) Act 1963.

14. This Act of Adjournal may be cited as the Act of Adjournal (Summary Procedure) 1964, and shall come into operation on 2nd March 1964.

And the Lords appoint this Act of Adjournal to be recorded in the Books of Adjournal, and to be published in the *Edinburgh Gazette*

(Sgd.) *J. L. Clyde,*
I.P.D.

SCHEDULE

Forms of Procedure Provided by this Act of Adjournal

Form 1

To (*name and designation*)

In respect that in the.....Court, you were on the .....day of.....19....., sentenced to pay a fine of £..... (*or* ordered to find caution for £..... for good behaviour) and.....days were allowed for payment (*or* to find caution); and in respect that the said fine (*or* part of the said fine amounting to £.....)

has not been paid (*or* caution for £..... has not been found) within the time allowed, you are ordained to appear personally on (*date*) at ....noon in the.....Court at (*address*) for an enquiry into your means under section 43 of the Summary Jurisdiction (Scotland) Act 1954, as amended.

FORM 2

I, ..., Officer of Law, upon the ..... day of.....19....., did lawfully cite (*name and designation as in the citation*) to appear personally before the ..... Court at ..... on..... at..... noon, for an enquiry into his means under section 43 of the Summary Jurisdiction (Scotland) Act 1954, as amended. This I did by delivering a copy of the citation to the said (*state how served upon accused, whether personally or left at dwelling-house or otherwise*). .....C.D. Police Constable.

FORM 3

I,..... ....., Procurator Fiscal (*or other person who has signed the citation*) did lawfully cite (*name and designation as in the citation*) to appear personally before the.....Court at..... on..... at.....noon, to answer to a complaint at my instance (or at the instance of.....) charging him with (*state offence*) (*or* for an enquiry into his means under section 43 of the Summary Jurisdiction (Scotland) Act 1954, as amended). This I did by posting a citation to him in a registered letter (*or* through the recorded delivery service) addressed to him at his dwelling-house (*or* place of business) as follows:—

The post office receipt for the said registered (*or* recorded delivery) letter accompanies this execution.

FORM 4

(*Place and Date*) In respect that in the.....Court,....., (*name and designation*) on the ..... day of .....19....., was sentenced to pay a fine of £..... (*or* ordered to find caution for £..... for good behaviour) and ..... days were allowed for payment (*or* to find caution); and in respect that the said.....has failed to pay the fine (*or* part of the said fine amounting to £.....) (*or* find the caution) within the time allowed, the court grants warrant for the apprehension of the said .....for the purpose of his being brought before the court for an enquiry into his means under section 43 of the Summary Jurisdiction (Scotland) Act 1954, as amended.

FORM 5

(*Place and Date*)....., Sheriff (*or* Magistrate).

Compeared the accused for enquiry into his means. After enquiry, the Court, in relation to the fine imposed on the accused on ....., 19....., imposed as an alternative to the payment of the said fine..... days' imprisonment to commence forthwith *or* allowed payment of the said fine to be made within..... days from this date, (*or as the case may be*).

FORM 6

To (*name and designation*)

In respect that a fine of £..... was imposed upon you by the ..... Court at ..... on..... and the said fine (*or* the balance of £..... of the said fine) remains unpaid, you are hereby given notice that you were this day by order of the said Court placed under the supervision of (*name*), Probation Officer, (*or* other designation) for so long as the said fine remains due and unpaid or until further order of the Court.

FORM 7

To the Governor of the Prison of ..... Take notice that the attendance of (*name*), presently in your custody, is required at .... on ..... at ..... noon.

(Sheriff or Magistrate).

FORM 8

TRANSFER OF FINE ORDER (within Scotland)

Under section 44 of the Summary Jurisdiction (Scotland) Act 1954, as amended.

In the..... Court, at , (*name*) was on the..... day of ..... 19....., convicted of (*offence*) and was sentenced to pay a fine of £..... (said fine to be paid by weekly (or monthly) instalments of ....., the first instalment to be paid on (*date*)), and the said fine (*or* the balance of the said fine as shown in the statement annexed hereto) is still unpaid and no term of imprisonment has been fixed in the event of a future default in payment of the sum in question:

And as it appears that the said (*name*) is now residing at .....:

a transfer of fine order is hereby made in pursuance of section 44 of the Summary Jurisdiction (Scotland) Act 1954, as amended, transferring to ..... Court (*insert name of a court of summary jurisdiction for the area in which the offender is now residing*), and to the Clerk thereof with respect to the said fine all the functions referred to in the said section.

(Sheriff or Magistrate).

Statement referred to

Fine	£.....
Instalment(s) paid to date of transfer	£.....
Balance due	£.....
In instalments of	£.....

(Signed by Clerk).

FORM 9

TRANSFER OF FINE ORDER (to England or Wales)

Under section 44 of the Summary Jurisdiction (Scotland) Act 1954, as amended.

In the ..... Court, at ....., (*name*) was on the ..... day of ..... 19....., convicted of (*offence*) and was sentenced to pay a fine of £... ..., (said fine to be paid by weekly (*or* monthly) instalments of....., the first instalment to be paid on (*date*)), and the said fine (*or* the balance of the said fine as shown in the statement annexed hereto) is still unpaid and no term of imprisonment has been fixed in the event of a future default in payment of the sum in question:

And as it appears that the said (*name*) is now residing at ....:

A transfer of fine order is hereby made in pursuance of section 44(1)(*b*) of the Summary Jurisdiction (Scotland) Act 1954, as amended by section 26 and Schedule 3 of the Criminal Justice (Scotland) Act 1963, transferring to .... (*insert name of the Magistrates' Court acting for the Petty Sessions area in which the offender is resident*) and to the clerk of the said Court with respect to the said fine, all the functions referred to in the said section 44.

(Sheriff or Magistrate).

Statement referred to

Fine £.....

Instalment(s) paid to date of transfer £.....

Balance due £.....

In instalments of £.....

(Signed by Clerk).

FORM 10

FURTHER TRANSFER OF FINE ORDER

Under section 44 of the Summary Jurisdiction (Scotland) Act 1954, as amended.

In the ..... Court at ..... (*or* the Magistrates' Court acting for the Petty Sessions area of ..... in the County of .....), (*name*) was on the ..... day of..... convicted of (*offence*) and was sentenced to pay a fine of £..... (said fine to be paid by weekly (*or* monthly) instalments of....., the first instalment to be paid on (*date*)).

By virtue of a transfer of fine order dated the ..... day of .....19....., the function of the last mentioned court and the clerk thereof with respect to that sum are exercisable by this ..... Court at ..... and the clerk thereof:

And the said (*name*) has not yet paid the said fine (*or* has paid £..... in part payment but has still to pay a balance of £..... as shown in the statement annexed hereto):

And as it appears that the said (*name*) is now residing at ....outwith the jurisdiction of this court:

A further transfer of fine order is hereby made in pursuance of section 44 of the Summary Jurisdiction (Scotland) Act 1954, as amended by Section 26 and Schedule 3 of the Criminal Justice (Scotland) Act 1963, transferring to..... ..... (*insert name of a court of summary jurisdiction or the Magistrates' Court for the area in which the offender is now resident*) and to the Clerk thereof all the functions referred to in the said section with respect to the sum(s) due (or balance of the sums due).

(Signed by Judge).

Statement referred to

(1) Fine £.....

(2) Any sums paid before transfer of fine to this Court £.....

(3) Instalment(s) paid to this Court to date of this further transfer £.....

(4) Balance remaining due £.....

In instalments of £.....

(Signed by Clerk).

FORM 11

NOTICE TO OFFENDER OF TRANSFER OF FINE ORDER

In the ..... Court at .....

To (*name and designation*)

On the ..... day of ..... 19....., you were convicted by ..... Court at ..... and were sentenced to pay a fine of £..... (said fine to be paid by weekly (*or* monthly) instalments of .....the first instalment to be paid on (*date*)), and the said fine has not been fully paid.

Notice is hereby given to you that in consequence of a transfer of fine order made by ..... Court on the ..... day of .....19....., the enforcement of the said fine or balance thereof due by you as shown in the statement annexed hereto, has become a matter for this Court.

Payment of the instalments (*or* balance) due by you should therefore be made within the time (*or* times) ordered, by post or personally to me (*Clerk of court and address*). If you cannot pay forthwith (*or* by ..... day of..... ..... 19.....) (*expiry of time allowed for payment*) you should at once make an application for further time to be granted. Such an application should be made either in person to this Court or by letter addressed to me stating fully why you are unable to pay the sum due.

(Signed by Clerk).

Note

Any communication sent by post must be stamped. Cash should not be sent in an unregistered envelope.

Statements referred to

Fine £.....

Instalment(s) paid to date of transfer £.....

Balance due £.....

In instalments of £.....

FORM 12

DIRECTION OF COURT AS TO MONEY FOUND ON OFFENDER

(*Section 41(2) of the Summary Jurisdiction (Scotland) Act 1954*)

The Court directed that the money found on the person of (*name of offender*) should not be applied to payment of the fine of £..... imposed upon him on..... 19.....

FORM 13

ORDER OF DETENTION IN PRECINCTS OF COURT

(*Section 46 of the Summary Jurisdiction (Scotland) Act 1954*)

The Court ordered the accused to be detained within the precincts of the Court (*or* police station) until (*state time*) of this day.

FORM 14

ORDER FOR DETENTION IN POLICE CUSTODY NOT EXCEEDING FOUR DAYS, INSTEAD OF IMPRISONMENT

(*Section 47(2) of the Summary Jurisdiction (Scotland) Act 1954*)

The Court ordered the accused to be detained in the custody of the Police, at (*place*) for the space of (*time*).

FORM 15

ORDER FOR EXTENSION OF TIME FOR PAYMENT OF FINE

(*Section 42(6) of the Summary Jurisdiction (Scotland) Act 1954 as amended*)

The Court having considered the application of the accused for extension of time for payment of the foregoing fine allowed payment to be made within ..... days from this date.

(Sgd.) J. L. CLYDE,
I.P.D.

EXPLANATORY NOTE

(This Note is not part of the Act of Adjournal, but is intended to indicate its general purport.)

This Act of Adjournal provides for the citation of the accused in a summary prosecution, and of certain other persons, to be effected by registered letter or through the recorded delivery service as well as in the modes now in use. It re-enacts the provisions as to citation contained in section 18(3) of the Summary Jurisdiction (Scotland) Act 1954. It repeals the Acts of Adjournal anent summary procedure of 1915 and 1938, consolidates with alterations and additions the respective provisions of those Acts of Adjournal, and provides certain amended and additional forms for use in relation to summary procedure.