

The penalties attached to an offence are the critical important factor in determining modes of trial, because of the very different sentencing powers available to the High Court, Sheriff Court and Justice of the Peace Court.

Summary Only Offences

A statutory offence which is triable only at summary level can carry a maximum custodial sentence of up to 12 months.

A number of summary-only offences, especially those in subordinate legislation, do not carry the option of imprisonment. But for those that do, the maximum period of imprisonment will be specified in the legislation.

The Criminal Proceedings (Reform) (Scotland) Act 2007 (CPR Act) made a number of changes to sentencing limits, but it **did not** raise the maximum level of imprisonment that may be imposed in existing summary only offences, except those summary only offences that are listed in section 44 of the CPR Act. It should be noted though that as the sentencing limit of the sheriff court in summary cases is now up to **12 months imprisonment**, it is possible for new statutory summary only offences to provide for a maximum period of up to that term.

There are a number of examples in existing legislation of offences attracting one or two months' imprisonment, but such maxima are now considered to be outdated, since it would be unrealistic to attempt to grade offences by seriousness so precisely. Old maxima of this type should be revised as opportunities arise.

Trial Summarily or on Indictment

An offence which is triable either at the summary level or on indictment can carry a maximum custodial sentence of up to 12 months when prosecuted at summary level, up to 5 years when prosecuted on indictment in the Sheriff Court and up to life imprisonment when prosecuted on indictment in the High Court.

If imprisonment is to be available on summary conviction for an offence that is triable either way, then the normal summary limit should be 12 months, reflecting the limit at common law following the commencement of section 43 of the CPR Act, and also the changes that will be made to existing either way statutory offences by virtue of section 45 of the CPR Act.

The term of imprisonment which may be provided on indictment can be up to life. If prosecuted in the sheriff court, the term of imprisonment is limited to 5 years, even if a longer term is provided in statute. However, the sheriff may remit a case to the High Court for sentence if he considers his maximum sentencing power to be inadequate in a particular case.

It is the prosecutor who determines the level of court in which to prosecute (subject to any restrictions placed by statute).

Indictment only Offences

These are rare and reserved for the most serious types of criminal conduct. In all cases, conviction for the offence is likely to justify substantial prison terms. An offence which is triable only on indictment can carry a maximum custodial sentence of up to 5 years when prosecuted on indictment in the Sheriff Court and up to life imprisonment when prosecuted on indictment in the High Court.

These are maximum sentence levels and there is no requirement to provide in legislation for the maximum. For example, it may be appropriate to provide for only a fine to be available as a sentence (with no custodial sentence available) or to provide for, say, a maximum custodial sentence of up to 6 months to be available for an offence triable only at the summary level.

Sentencing Powers of the Courts

The table below summarises the various jurisdiction limits available for different levels of court.

	Summary only	Summary or on Indictment (triable both way offence when prosecuted summarily)	Indictment only
Justice of the Peace Courts (except Stipendiary Magistrates)			
Fine	Level 4 on the standard scale - £2,500	Level 4 on the standard scale - £2,500	N/A
Imprisonment	60 days	60 days	N/A
Stipendiary Magistrates (sitting as a Justice of the Peace Court)			
Fine	Level 5 on the standard scale - £5,000	Statutory maximum - £10,000	N/A
Imprisonment	12 months	12 months	N/A
Sheriff Court			
Fine	Level 5 on the standard scale - £5,000	Statutory maximum	Unlimited
Imprisonment	12 months	12 months	5 years (or remit to the High Court for sentencing)
High Court of Justiciary			
Fine	N/A	N/A	Unlimited
Imprisonment	N/A	N/A	Life