



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VII

#### SOLEMN PROCEEDINGS

##### *The indictment*

#### **64 Prosecution on indictment**

- (1) All prosecutions for the public interest before the High Court or before the sheriff sitting with a jury shall proceed on indictment in name of Her Majesty's Advocate.
- (2) The indictment may be in the forms—
  - (a) set out in Schedule 2 to this Act; or
  - (b) prescribed by Act of Adjournal,or as nearly as may be in such form.
- (3) Indictments in proceedings before the High Court shall be signed by the Lord Advocate or one of his deutes.
- (4) Indictments in proceedings before the sheriff sitting with a jury shall be signed by the procurator fiscal, and the words "By Authority of Her Majesty's Advocate" shall be prefixed to the signature of the procurator fiscal.
- (5) The principal record and service copies of indictments and all notices of citation, lists of witnesses, productions and jurors, and all other official documents required in a prosecution on indictment may be either written or printed or partly written and partly printed.
- (6) Schedule 3 to this Act shall have effect as regards indictments under this Act.

**65 Prevention of delay in trials**

- (1) Subject to subsections (2) and (3) below, an accused shall not be tried on indictment for any offence unless the trial is commenced within a period of 12 months of the first appearance of the accused on petition in respect of the offence; and, failing such commencement within that period, the accused shall be discharged forthwith and thereafter he shall be for ever free from all question or process for that offence.
- (2) Nothing in subsection (1) above shall bar the trial of an accused for whose arrest a warrant has been granted for failure to appear at a diet in the case.
- (3) On an application made for the purpose, the sheriff or, where an indictment has been served on the accused in respect of the High Court, a single judge of that court, may on cause shown extend the said period of 12 months.
- (4) Subject to subsections (5) to (9) below, an accused who is committed for any offence until liberated in due course of law shall not be detained by virtue of that committal for a total period of more than—
  - (a) 80 days, unless within that period the indictment is served on him, which failing he shall be liberated forthwith; or
  - (b) 110 days, unless the trial of the case is commenced within that period, which failing he shall be liberated forthwith and thereafter he shall be for ever free from all question or process for that offence.
- (5) Subject to subsection (6) below, a single judge of the High Court, may, on an application made to him for the purpose, for any sufficient cause extend the period mentioned in subsection (4)(a) above.
- (6) An application under subsection (5) above shall not be granted if the judge is satisfied that, but for some fault on the part of the prosecution, the indictment could have been served within the period of 80 days.
- (7) A single judge of the High Court may, on an application made to him for the purpose, extend the period mentioned in subsection (4)(b) above where he is satisfied that delay in the commencement of the trial is due to—
  - (a) the illness of the accused or of a judge;
  - (b) the absence or illness of any necessary witness;
  - (c) any other sufficient cause which is not attributable to any fault on the part of the prosecutor.
- (8) The grant or refusal of any application to extend the periods mentioned in this section may be appealed against by note of appeal presented to the High Court; and that Court may affirm, reverse or amend the determination made on such application.
- (9) For the purposes of this section, a trial shall be taken to commence when the oath is administered to the jury.
- (10) In calculating the period of 12 months specified in subsections (1) and (3) above there shall be left out of account any period during which the accused is detained, other than while serving a sentence of imprisonment or detention, in any other part of the United Kingdom or in any of the Channel Islands or the Isle of Man in any prison or other institution or place mentioned in subsection (1) or (1A) of section 29 of the Criminal Justice Act 1961 (transfer of prisoners for certain judicial purposes).

## **66 Service and lodging of indictment, etc**

- (1) When a sitting of the sheriff court or of the High Court has been appointed to be held for the trial of persons accused on indictment—
  - (a) where the trial diet is to be held in the sheriff court, the sheriff clerk; and
  - (b) where the trial diet is to be held in the High Court, the Clerk of Justiciary,shall issue a warrant to officers of law to cite the accused, witnesses and jurors, in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form, and such warrant authenticated by the signature of such clerk, or a duly certified copy thereof, shall be a sufficient warrant for such citation.
- (2) The execution of the citation against an accused, witness or juror shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form.
- (3) A witness may be cited by sending the citation to the witness by ordinary or registered post or by the recorded delivery service and a written execution in the form prescribed by Act of Adjournal or as nearly as may be in such form, purporting to be signed by the person who served such citation together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such citation.
- (4) The accused shall be served with a copy of the indictment and of the list of the names and addresses of the witnesses to be adduced by the prosecution.
- (5) Except in a case to which section 76 of this Act applies, the prosecutor shall on or before the date of service of the indictment lodge the record copy of the indictment with the clerk of court before which the trial is to take place, together with a copy of the list of witnesses and a copy of the list of productions.
- (6) Except where the indictment is served under section 76(1) of this Act, a notice shall be served on the accused with the indictment calling upon him to appear and answer to the indictment—
  - (a) where the case is to be tried in the sheriff court, at a first diet not less than 15 clear days after the service of the indictment and not less than 10 clear days before the trial diet; and
  - (b) at a trial diet (either in the High Court or in the sheriff court) not less than 29 clear days after the service of the indictment and notice.
- (7) Service of the indictment, lists of witnesses and productions, and any notice or intimation to the accused, and the citation of witnesses, whether for precognition or trial, may be effected by any officer of law.
- (8) No objection to the service of an indictment or to the citation of a witness shall be upheld on the ground that the officer who effected service or executed the citation was not at the time in possession of the warrant of citation, and it shall not be necessary to produce the execution of citation of an indictment.
- (9) The citation of witnesses may be effected by any officer of law duly authorised; and in any proceedings, the evidence on oath of the officer shall, subject to subsection (10) below, be sufficient evidence of the execution of the citation.
- (10) A court shall not issue a warrant to apprehend a witness who fails to appear at a diet to which he has been duly cited unless the court is satisfied that the witness received the citation or that its contents came to his knowledge.

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

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- (11) No objection to the competency of the officer who served the indictment to give evidence in respect of such service shall be upheld on the ground that his name is not included in the list of witnesses served on the accused.
- (12) Any deletion or correction made before service on the record or service copy of an indictment shall be sufficiently authenticated by the initials of the person who has signed, or could by law have signed, the indictment.
- (13) Any deletion or correction made on a service copy of an indictment, or on any notice of citation, postponement, adjournment or other notice required to be served on an accused shall be sufficiently authenticated by the initials of any procurator fiscal or of the person serving the same.
- (14) Any deletion or correction made on any execution of citation or notice of other document requiring to be served shall be sufficiently authenticated by the initials of the person serving the same.

## **67 Witnesses**

- (1) The list of witnesses shall consist of the names of the witnesses together with an address at which they can be contacted for the purposes of precognition.
- (2) It shall not be necessary to include in the list of witnesses the names of any witnesses to the declaration of the accused or the names of any witnesses to prove that an extract conviction applies to the accused, but witnesses may be examined in regard to these matters without previous notice.
- (3) Any objection in respect of misnomer or misdescription of—
  - (a) any person named in the indictment; or
  - (b) any witness in the list of witnesses,shall be intimated in writing to the court before which the trial is to take place, to the prosecutor and to any other accused, where the case is to be tried in the sheriff court, at or before the first diet and, where the case is to be tried in the High Court, not less than ten clear days before the trial diet; and, except on cause shown, no such objection shall be admitted at the trial diet unless so intimated.
- (4) Where such intimation has been given or cause is shown and the court is satisfied that the accused making the objection has not been supplied with sufficient information to enable him to identify the person named in the indictment or to find such witness in sufficient time to precognosce him before the trial, the court may grant such remedy by postponement, adjournment or otherwise as appears to it to be appropriate.
- (5) Without prejudice to—
  - (a) any enactment or rule of law permitting the prosecutor to examine any witness not included in the list of witnesses; or
  - (b) subsection (6) below,in any trial it shall be competent with the leave of the court for the prosecutor to examine any witness or to put in evidence any production not included in the lists lodged by him, provided that written notice, containing in the case of a witness his name and address as mentioned in subsection (1) above, has been given to the accused not less than two clear days before the day on which the jury is sworn to try the case.

- (6) It shall be competent for the prosecutor to examine any witness or put in evidence any production included in any list or notice lodged by the accused, and it shall be competent for an accused to examine any witness or put in evidence any production included in any list or notice lodged by the prosecutor or by a co-accused.

## **68 Productions**

- (1) The list of productions shall include the record, made under section 37 of this Act (incorporating any rectification authorised under section 38(1) of this Act), of proceedings at the examination of the accused.
- (2) The accused shall be entitled to see the productions according to the existing law and practice in the office of the sheriff clerk of the district in which the court of the trial diet is situated or, where the trial diet is to be in the High Court in Edinburgh, in the Justiciary Office.
- (3) Where a person who has examined a production is adduced to give evidence with regard to it and the production has been lodged at least eight days before the trial diet, it shall not be necessary to prove—
- (a) 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; or
  - (b) that the production examined by him is that taken possession of by the procurator fiscal or the police,
- unless the accused, at least four days before the trial diet, gives in accordance with subsection (4) below written notice that he does not admit that the production was received or returned as aforesaid or, as the case may be, that it is that taken possession of as aforesaid.
- (4) The notice mentioned in subsection (3) above shall be given—
- (a) where the accused is cited to the High Court for the trial diet, to the Crown Agent; and
  - (b) where he is cited to the sheriff court for the trial diet, to the procurator fiscal.

## **69 Notice of previous convictions**

- (1) 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.
- (2) If the prosecutor intends to place before the court any previous conviction, he shall cause to be served on the accused along with the indictment a notice in the form set out in an Act of Adjournal or as nearly as may be in such form, and any conviction specified in the notice shall be held to apply to the accused unless he gives, in accordance with subsection (3) below, written intimation objecting to such conviction on the ground that it does not apply to him or is otherwise inadmissible.
- (3) Intimation objecting to a conviction under subsection (2) above shall be given—
- (a) where the accused is cited to the High Court for the trial diet, to the Crown Agent; or
  - (b) where the accused is cited to the sheriff court for the trial diet, to the procurator fiscal,

at least five clear days before the first day of the sitting in which the trial diet is to be held.

- (4) Where notice is given by the accused under section 76 of this Act of his intention to plead guilty and the prosecutor intends to place before the court any previous conviction, he shall cause to be served on the accused along with the indictment a notice in the form set out in an Act of Adjournal or as nearly as may be in such form.
- (5) Where the accused pleads guilty at any diet, no objection to any conviction of which notice has been served on him under this section shall be entertained unless he has, at least two clear days before the diet, given intimation to the procurator fiscal of the district to the court of which the accused is cited for the diet.

## **70 Proceedings against bodies corporate**

- (1) This section applies to proceedings on indictment against a body corporate.
- (2) The indictment may be served by delivery of a copy of the indictment together with notice to appear 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.
- (3) Where a letter containing a copy of the indictment has been sent by registered post or by the recorded delivery service to the registered office or principal place of business of the body corporate, an acknowledgement or certificate of the delivery of the letter issued by the Post Office shall be sufficient evidence of the delivery of the letter at the registered office or place of business on the day specified in such acknowledgement or certificate.
- (4) A body corporate may, for the purpose of—
  - (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.
- (5) Where at the trial diet the body corporate does not appear as mentioned in subsection (4) above, or by counsel or a solicitor, the court shall, on the motion of the prosecutor, if it is satisfied that subsection (2) above has been complied with, proceed to hear and dispose of the case in the absence of the body corporate.
- (6) Where 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 Queen's and Lord Treasurer's Remembrancer.
- (7) Nothing in section 77 of this Act shall require a plea tendered by or on behalf of a body corporate to be signed.
- (8) In this section, "representative", in relation to a body corporate, means an officer or employee of the body corporate duly appointed by it for the purpose of the proceedings; 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 any proceedings to which this section applies shall be sufficient evidence of such appointment.

### *Pre-trial proceedings*

## **71 First diet**

- (1) At a first diet the court shall, so far as is reasonably practicable, ascertain whether the case is likely to proceed to trial on the date assigned as the trial diet and, in particular—
  - (a) the state of preparation of the prosecutor and of the accused with respect to their cases; and
  - (b) the extent to which the prosecutor and the accused have complied with the duty under section 257(1) of this Act.
- (2) In addition to the matters mentioned in subsection (1) above the court shall, at a first diet, consider any matter mentioned in any of paragraphs (a) to (d) of section 72(1) of this Act of which a party has, not less than two clear days before the first diet, given notice to the court and to the other parties.
- (3) At a first diet the court may ask the prosecutor and the accused any question in connection with any matter which it is required to ascertain or consider under subsection (1) or (2) above.
- (4) The accused shall attend a first diet of which he has been given notice and the court may, if he fails to do so, grant a warrant to apprehend him.
- (5) A first diet may proceed notwithstanding the absence of the accused.
- (6) The accused shall, at the first diet, be required to state how he pleads to the indictment, and section 77 of this Act shall apply where he tenders a plea of guilty.
- (7) Where at a first diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—
  - (a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and
  - (b) may fix a further first diet.
- (8) Subject to subsection (7) above, the court may, if it considers it appropriate to do so, adjourn a first diet.
- (9) In this section “the court” means the sheriff court.

## **72 Preliminary diet: notice**

- (1) Subject to subsections (4) and (5) below, where a party to a case which is to be tried in the High Court within the appropriate period gives written notice to the court and to the other parties—
  - (a) that he intends to raise—
    - (i) a matter relating to the competency or relevancy of the indictment; or
    - (ii) an objection to the validity of the citation against him, on the ground of any discrepancy between the record copy of the indictment and the copy served on him, or on account of any error or deficiency in such service copy or in the notice of citation;

- (b) that he intends—
    - (i) to submit a plea in bar of trial;
    - (ii) to apply for separation or conjunction of charges or trials;
    - (iii) to raise a preliminary objection under section 255 of this Act; or
    - (iv) to make an application under section 278(2) of this Act;
  - (c) that there are documents the truth of the contents of which ought to be admitted, or that there is any other matter which in his view ought to be agreed;
  - (d) that there is some point, as regards any matter not mentioned in paragraph (a) to (c) above, which could in his opinion be resolved with advantage before the trial and that he therefore applies for a diet to be held before the trial diet, the court shall in a case to which paragraph (a) above applies, and in any other case may, order that there be a diet before the trial diet, and a diet ordered under this subsection is in this Act referred to as a “preliminary diet”.
- (2) A party giving notice under subsection (1) above shall specify in the notice the matter or, as the case may be, the grounds of submission or the point to which the notice relates.
- (3) The fact that a preliminary diet has been ordered on a particular notice under subsection (1) above shall not preclude the court’s consideration at that diet of any other such notice as is mentioned in that subsection, which has been intimated to the court and to the other parties at least 24 hours before that diet.
- (4) Subject to subsection (5) below, the court may on ordering a preliminary diet postpone the trial diet for a period not exceeding 21 days; and any such postponement (including postponement for a period which by virtue of the said subsection (5) exceeds 21 days) shall not count towards any time limit applying in respect of the case.
- (5) Any period mentioned in subsection (4) above may be extended by the High Court in respect of the case.
- (6) In subsection (1) above, “appropriate period” means as regards notice—
- (a) under paragraph (a) of that subsection, the period of 15 clear days after service of the indictment;
  - (b) under paragraph (b) of that subsection, the period from service of the indictment to 10 clear days before the trial diet; and
  - (c) under paragraph (c) or (d) of that subsection, the period from service of the indictment to the trial diet.

### **73 Preliminary diet: procedure**

- (1) Where a preliminary diet is ordered, subject to subsection (2) below, the accused shall attend it, and he shall be required at the conclusion of the diet to state how he pleads to the indictment.
- (2) The court may permit the diet to proceed notwithstanding the absence of an accused.
- (3) At a preliminary diet the court shall, in addition to disposing of any matter specified in a notice given under subsection (1) of section 72 of this Act or referred to in subsection (3) of that section, ascertain, so far as is reasonably practicable, whether the case is likely to proceed to trial on the date assigned as the trial diet and, in particular—
  - (a) the state of preparation of the prosecutor and of the accused with respect to their cases; and



- (b) the extent to which the prosecutor and the accused have complied with the duty under section 257(1) of this Act.
- (4) At a preliminary diet the court may ask the prosecutor and the accused any question in connection with any matter specified in a notice under subsection (1) of the said section 72 or referred to in subsection (3) of that section or which it is required to ascertain under subsection (3) above.
- (5) Where at a preliminary diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—
  - (a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and
  - (b) may fix a further preliminary diet.
- (6) Subject to subsection (5) above, the court may, if it considers it appropriate to do so, adjourn a preliminary diet.
- (7) Where an objection is taken to the relevancy of the indictment under subsection (1)(a)(i) of the said section 72, the clerk of court shall minute whether the objection is sustained or repelled and sign the minute.
- (8) In subsection (1) above, the reference to the accused shall, without prejudice to section 6(c) of the Interpretation Act 1978, in any case where there is more than one accused include a reference to all of them.

#### **74 Appeals in connection with preliminary diets**

- (1) Without prejudice to—
  - (a) any right of appeal under section 106 or 108 of this Act; and
  - (b) section 131 of this Act,and subject to subsection (2) below, a party may with the leave of the court of first instance (granted either on the motion of the party or *ex proprio motu*) in accordance with such procedure as may be prescribed by Act of Adjournal, appeal to the High Court against a decision at a first diet or a preliminary diet.
- (2) An appeal under subsection (1) above—
  - (a) may not be taken against a decision to adjourn the first or, as the case may be, preliminary diet or to postpone the trial diet;
  - (b) must be taken not later than 2 days after the decision.
- (3) Where an appeal is taken under subsection (1) above, the High Court may postpone the trial diet for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.
- (4) In disposing of an appeal under subsection (1) above the High Court—
  - (a) may affirm the decision of the court of first instance or may remit the case to it with such directions in the matter as it thinks fit; and
  - (b) where the court of first instance has dismissed the indictment or any part of it, may reverse that decision and direct that the court of first instance fix a trial diet, if it has not already fixed one as regards so much of the indictment as it has not dismissed.

**75 Computation of certain periods**

Where the last day of any period mentioned in section 66(6), 67(3), 72 or 74 of this Act falls on a Saturday, Sunday or court holiday, such period shall extend to and include the next day which is not a Saturday, Sunday or court holiday.

*Plea of guilty***76 Procedure where accused desires to plead guilty**

- (1) Where an accused intimates in writing to the Crown Agent that he intends to plead guilty and desires to have his case disposed of at once, the accused may be served with an indictment (unless one has already been served) and a notice to appear at a diet of the appropriate court not less than four clear days after the date of the notice; and it shall not be necessary to lodge or give notice of any list of witnesses or productions.
- (2) In subsection (1) above, “appropriate court” means—
  - (a) in a case where at the time of the intimation mentioned in that subsection an indictment had not been served, either the High Court or the sheriff court; and
  - (b) in any other case, the court specified in the notice served under section 66(6) of this Act on the accused.
- (3) If at any such diet the accused pleads not guilty to the charge or pleads guilty only to a part of the charge, and the prosecutor declines to accept such restricted plea, the diet shall be deserted *pro loco et tempore* and thereafter the cause may proceed in accordance with the other provisions of this Part of this Act; except that in a case mentioned in paragraph (b) of subsection (2) above the court may postpone the trial diet and the period of such postponement shall not count towards any time limit applying in respect of the case.

**77 Plea of guilty**

- (1) Where at any diet the accused tenders a plea of guilty to the indictment or any part thereof he shall do so in open court and, subject to section 70(7) of this Act, shall, if he is able to do so, sign a written copy of the plea; and the judge shall countersign such copy.
- (2) Where the plea is to part only of the charge and the prosecutor does not accept the plea, such non-acceptance shall be recorded.
- (3) Where an accused charged on indictment with any offence tenders a plea of guilty to any other offence of which he could competently be found guilty on the trial of the indictment, and that plea is accepted by the prosecutor, it shall be competent to convict the accused of the offence to which he has so pled guilty and to sentence him accordingly.

*Notice by accused***78 Special defences, incrimination and notice of witnesses, etc**

- (1) It shall not be competent for an accused to state a special defence or to lead evidence calculated to exculpate the accused by incriminating a co-accused unless—

- (a) a plea of special defence or, as the case may be, notice of intention to lead such evidence has been lodged and intimated in writing in accordance with subsection (3) below—
    - (i) where the accused is cited to the High Court for the trial diet, to the Crown Agent; and
    - (ii) where he is cited to the sheriff court for the trial diet, to the procurator fiscal,and to any co-accused not less than 10 clear days before the trial diet; or
  - (b) the court, on cause shown, otherwise directs.
- (2) Subsection (1) above shall apply to a defence of automatism or coercion as if it were a special defence.
- (3) A plea or notice is lodged and intimated in accordance with this subsection—
- (a) where the accused is cited to the High Court for the trial diet, by lodging the plea or notice with the Clerk of Justiciary and by intimating the plea or notice to the Crown Agent and to any co-accused not less than 10 clear days before the trial diet;
  - (b) where the accused is cited to the sheriff court for the trial diet, by lodging the plea or notice with the sheriff clerk and by intimating it to the procurator fiscal and to any co-accused at or before the first diet.
- (4) It shall not be competent for the accused to examine any witnesses or to put in evidence any productions not included in the lists lodged by the prosecutor unless—
- (a) written notice of the names and addresses of such witnesses and of such productions has been given—
    - (i) where the case is to be tried in the sheriff court, to the procurator fiscal of the district of the trial diet at or before the first diet; and
    - (ii) where the case is to be tried in the High Court, to the Crown Agent at least ten clear days before the day on which the jury is sworn; or
  - (b) the court, on cause shown, otherwise directs.
- (5) A copy of every written notice required by subsection (4) above shall be lodged by the accused with the sheriff clerk of the district in which the trial diet is to be held, or in any case the trial diet of which is to be held in the High Court in Edinburgh with the Clerk of Justiciary, at or before the trial diet, for the use of the court.

## **79 Preliminary pleas**

- (1) Except by leave of the court on cause shown, no application, matter or point mentioned in subsection (1) of section 72 of this Act or that subsection as applied by section 71 of this Act shall be made, raised or submitted by an accused unless his intention to do so has been stated in a notice under the said subsection (1) or, as the case may be, under subsection (2) of the said section 71.
- (2) No discrepancy, error or deficiency such as is mentioned in paragraph (a)(ii) of subsection (1) of the said section 72 or that subsection as applied by the said section 71 shall entitle the accused to object to plead to the indictment unless the court is satisfied that the discrepancy, error or deficiency tended substantially to mislead and prejudice the accused.

*Alteration, etc, of diet*

**80 Alteration and postponement of trial diet**

- (1) Where an indictment is not brought to trial at the trial diet and a warrant for a subsequent sitting of the court on a day within two months after the date of the trial diet has been issued under section 66(1) of this Act by the clerk of court, the court may adjourn the trial diet to the subsequent sitting, and the warrant shall have effect as if the trial diet had originally been fixed for the date of the subsequent sitting.
- (2) At any time before the trial diet, a party may apply to the court before which the trial is to take place for postponement of the trial diet.
- (3) Subject to subsection (4) below, after hearing all the parties the court may discharge the trial diet and either fix a new trial diet or give leave to the prosecutor to serve a notice fixing a new trial diet.
- (4) Where all the parties join in an application to postpone the trial diet, the court may proceed under subsection (3) above without hearing the parties.
- (5) Where there is a hearing under this section the accused shall attend it, unless the court permits the hearing to proceed notwithstanding the absence of the accused.
- (6) In subsection (5) above, the reference to the accused shall, without prejudice to section 6(c) of the Interpretation Act 1978, in any case where there is more than one accused include a reference to all of them.

**81 Procedure where trial does not take place**

- (1) Where at the trial diet—
  - (a) the diet has been deserted *pro loco et tempore* for any cause; or
  - (b) an indictment is for any cause not brought to trial and no order has been given by the court postponing such trial or appointing it to be held at a subsequent date at some other sitting of the court,it shall be lawful at any time within nine clear days after the last day of the sitting in which the trial diet was to be held to give notice to the accused on another copy of the indictment to appear to answer the indictment at a further diet either in the High Court or in the sheriff court when the charge is one that can be lawfully tried in that court, notwithstanding that the original citation to a trial diet was to a different court.
- (2) Without prejudice to subsection (1) above, where a trial diet has been deserted *pro loco et tempore* and the court has appointed a further trial diet to be held on a subsequent date at the same sitting the accused shall require to appear and answer the indictment at that further diet.
- (3) The prosecutor shall not raise a fresh libel in a case where the court has deserted the trial *simpliciter* and its decision in that regard has not been reversed on appeal.
- (4) The notice referred to in subsection (1) above shall be in the form prescribed by Act of Adjournal or as nearly as may be in such form.
- (5) The further diet specified in the notice referred to in subsection (1) above shall be not earlier than nine clear days from the giving of the notice.

- (6) On or before the day on which notice referred to in subsection (1) above is given, a list of jurors shall be prepared, signed and kept by the sheriff clerk of the district to which the notice applies in the manner provided in section 85(1) and (2) of this Act.
- (7) The warrant issued under section 66(1) of this Act shall be sufficient warrant for the citation of accused and witnesses to the further diet.

## **82 Desertion or postponement where accused in custody**

Where—

- (a) a diet is deserted *pro loco et tempore*;
- (b) a diet is postponed or adjourned; or
- (c) an order is issued for the trial to take place at a different place from that first given notice of,

the warrant of committal on which the accused is at the time in custody till liberated in due course of law shall continue in force.

## **83 Transfer of sheriff court solemn proceedings**

- (1) Where an accused person has been cited to attend a sitting of the sheriff court the prosecutor may, at any time before the commencement of his trial, apply to the sheriff to transfer the case to a sheriff court in any other district in that sheriffdom.
- (2) On an application under subsection (1) above the sheriff may—
  - (a) after giving the accused or his counsel or solicitor an opportunity to be heard; or
  - (b) on the joint application of the parties,make an order for the transfer of the case.

*Jurors for sittings*

## **84 Juries: returns of jurors and preparation of lists**

- (1) For the purposes of a trial, the sheriff principal shall return such number of jurors as he thinks fit or, in relation to a trial in the High Court, such other number as the Lord Justice Clerk or any Lord Commissioner of Justiciary may direct.
- (2) The Lord Justice General, whom failing the Lord Justice Clerk, may give directions as to the areas from which and the proportions in which jurors are to be summoned for trials to be held in the High Court, and for any such trial the sheriff principal of the sheriffdom in which the trial is to take place shall requisition the required number of jurors from the areas and in the proportions so specified.
- (3) Where a sitting of the High Court is to be held at a town in which the High Court does not usually sit, the jury summoned to try any case in such a sitting shall be summoned from the list of potential jurors of the sheriff court district in which the town is situated.
- (4) For the purpose of a trial in the sheriff court, the clerk of court shall be furnished with a list of names from lists of potential jurors of the sheriff court district in which the court is held containing the number of persons required.

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- (5) The sheriff principal, in any return of jurors made by him to a court, shall take the names in regular order, beginning at the top of the list of potential jurors in each of the sheriff court districts, as required; and as often as a juror is returned to him, he shall mark or cause to be marked, in the list of potential jurors of the respective sheriff court districts the date when any such juror was returned to serve; and in any such return he shall commence with the name immediately after the last in the preceding return, without regard to the court to which the return was last made, and taking the subsequent names in the order in which they are entered, as directed by this subsection, and so to the end of the lists respectively.
- (6) Where a person whose name has been entered in the lists of potential jurors dies, or ceases to be qualified to serve as a juror, the sheriff principal, in making returns of jurors in accordance with the Jurors (Scotland) Act 1825, shall pass over the name of that person, but the date at which his name has been so passed over, and the reason therefor, shall be entered at the time in the lists of potential jurors.
- (7) Only the lists returned in accordance with this section by the sheriffs principal to the clerks of court shall be used for the trials for which they were required.
- (8) The persons to serve as jurors at sittings of the High Court shall be listed and their names and addresses shall be inserted in one roll to be signed by the judge, and the list made up under this section shall be known as the “list of assize”.
- (9) When more than one case is set down for trial at a sitting of the High Court, it shall not be necessary to prepare more than one list of assize, and such list shall be authenticated by the signature of a judge of the Court, and shall be the list of assize for the trial of all parties cited to that particular sitting; and the persons included in such list shall be summoned to serve generally for the trials of all the accused cited to the sitting, and only one general execution of citation shall be returned against them; and a copy of the list of assize, certified by one of the clerks of court, shall have the like effect, for all purposes for which the list may be required, as the principal list of assize authenticated as aforesaid.
- (10) No irregularity in—
- (a) making up the lists in accordance with the provisions of this Act;
  - (b) transmitting the lists;
  - (c) the warrant of citation;
  - (d) summoning jurors; or
  - (e) in returning any execution of citation,
- shall constitute an objection to jurors whose names are included in the jury list, subject to the ruling of the court in relation to the effect of an objection as to any criminal act by which jurors may be returned to serve in any case contrary to this Act or the Jurors (Scotland) Act 1825.

## **85 Juries: citation and attendance of jurors**

- (1) It shall not be necessary to serve any list of jurors upon the accused, but on and after the date of the service of an indictment, a list of jurors prepared under the directions of the clerk of the court before which the trial is to take place shall be kept in the office of the sheriff clerk of the district in which the court of the trial diet is situated, and the accused shall be entitled to have a copy supplied to him on application free of charge.

- (2) Such list shall contain not less than 30 names, and shall be headed “List of Assize for the Sitting of the High Court of Justiciary (or, the Sheriff Court of ... .. ) at ... .. ) on the ... .. of ... .. ”
- (3) It shall not be necessary to summon all the jurors contained in any list of jurors under this Act, but it shall be competent to summon such jurors only, commencing from the top of the list, as may be necessary to ensure a sufficient number for the trial of the cases which remain for trial at the date of the citation of the jurors, and such number shall be fixed by the clerk of the court in which the trial diet is to be called, or in any case in the High Court by the Clerk of Justiciary, and the jurors who are not so summoned shall be placed upon the next list issued, until they have attended to serve.
- (4) The sheriff clerk of the sheriffdom in which a sitting of the High Court is to be held or the sheriff clerk of the sheriff court district in which any juror is to be cited where the citation is for a trial before a sheriff, shall fill up and sign a proper citation addressed to each such juror, and shall cause the same to be transmitted to him by letter, sent to him at his place of residence as stated in the lists of potential jurors by registered post or recorded delivery or to be served on him by an officer of law; and a certificate under the hand of such sheriff clerk of the citation of any jurors or juror in the manner provided in this subsection shall be a legal citation.
- (5) The sheriff clerk of the sheriffdom in which a sitting of the High Court is to be held shall issue citations to the whole jurors required for the sitting, whether the jurors reside in that or in any other sheriffdom.
- (6) Persons cited to attend as jurors may, unless they have been excused in respect thereof under section 1 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980, be fined up to level 3 on the standard scale if they fail to attend in compliance with the citation.
- (7) A fine imposed under subsection (6) above may, on application, be remitted—
  - (a) by a Lord Commissioner of Justiciary where imposed in the High Court;
  - (b) by the sheriff court where imposed in the sheriff court,and no court fees or expenses shall be exigible in respect of any such application.
- (8) A person shall not be exempted by sex or marriage from the liability to serve as a juror.

## **86 Jurors: excusal and objections**

- (1) Where, before a juror is sworn to serve, the parties jointly apply for him to be excused the court shall, notwithstanding that no reason is given in the application, excuse that juror from service.
- (2) Nothing in subsection (1) above shall affect the right of the accused or the prosecutor to object to any juror on cause shown.
- (3) If any objection is taken to a juror on cause shown and such objection is founded on the want of sufficient qualification as provided by section 1(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980, such objection shall be proved only by the oath of the juror objected to.
- (4) No objection to a juror shall be competent after he has been sworn to serve.

*Non-availability of judge***87 Non-availability of judge**

- (1) Where the court is unable to proceed owing to the death, illness or absence of the presiding judge, the clerk of court may convene the court (if necessary) and—
  - (a) in a case where no evidence has been led, adjourn the diet and any other diet appointed for that sitting to—
    - (i) a time later the same day, or a date not more than seven days later, when he believes a judge will be available; or
    - (ii) a later sitting not more than two months after the date of the adjournment; or
  - (b) in a case where evidence has been led—
    - (i) adjourn the diet and any other diet appointed for that sitting to a time later the same day, or a date not more than seven days later, when he believes a judge will be available; or
    - (ii) with the consent of the parties, desert the diet *pro loco et tempore*.
- (2) Where a diet has been adjourned under sub-paragraph (i) of either paragraph (a) or paragraph (b) of subsection (1) above the clerk of court may, where the conditions of that subsection continue to be satisfied, further adjourn the diet under that sub-paragraph; but the total period of such adjournments shall not exceed seven days.
- (3) Where a diet has been adjourned under subsection (1)(b)(i) above the court may, at the adjourned diet—
  - (a) further adjourn the diet; or
  - (b) desert the diet *pro loco et tempore*.
- (4) Where a diet is deserted in pursuance of subsection (1)(b)(ii) or (3)(b) above, the Lord Advocate may raise and insist in a new indictment, and—
  - (a) where the accused is in custody it shall not be necessary to grant a new warrant for his incarceration, and the warrant or commitment on which he is at the time in custody till liberation in due course of law shall continue in force; and
  - (b) where the accused is at liberty on bail, his bail shall continue in force.

*Jury for trial***88 Plea of not guilty, balloting and swearing of jury, etc**

- (1) Where the accused pleads not guilty, the clerk of court shall record that fact and proceed to ballot the jury.
- (2) The jurors for the trial shall be chosen in open court by ballot from the list of persons summoned in such manner as shall be prescribed by Act of Adjournal, and the persons so chosen shall be the jury to try the accused, and their names shall be recorded in the minutes of the proceedings.
- (3) It shall not be competent for the accused or the prosecutor to object to a juror on the ground that the juror has not been duly cited to attend.



- (4) Notwithstanding subsection (1) above, the jurors chosen for any particular trial may, when that trial is disposed of, without a new ballot serve on the trials of other accused, provided that—
  - (a) the accused and the prosecutor consent;
  - (b) the names of the jurors are contained in the list of jurors; and
  - (c) the jurors are duly sworn to serve on each successive trial.
- (5) When the jury has been balloted, the clerk of court shall inform the jury of the charge against the accused—
  - (a) by reading the words of the indictment (with the substitution of the third person for the second); or
  - (b) if the presiding judge, because of the length or complexity of the indictment, so directs, by reading to the jury a summary of the charge approved by the judge,and copies of the indictment shall be provided for each member of the jury without lists of witnesses or productions.
- (6) After reading the charge as mentioned in subsection (5) above and any special defence as mentioned in section 89(1) of this Act, the clerk of court shall administer the oath in common form.
- (7) The court may excuse a juror from serving on a trial where the juror has stated the ground for being excused in open court.
- (8) Where a trial which is proceeding is adjourned from one day to another, the jury shall not be secluded during the adjournment, unless, on the motion of the prosecutor or the accused or *ex proprio motu* the court sees fit to order that the jury be kept secluded.

## **89 Jury to be informed of special defence**

- (1) Subject to subsection (2) below, where the accused has lodged a plea of special defence, the clerk of court shall, after informing the jury, in accordance with section 88(5) of this Act, of the charge against the accused, and before administering the oath, read to the jury the plea of special defence.
- (2) Where the presiding judge on cause shown so directs, the plea of special defence shall not be read over to the jury in accordance with subsection (1) above; and in any such case the judge shall inform the jury of the lodging of the plea and of the general nature of the special defence.
- (3) Copies of a plea of special defence shall be provided for each member of the jury.

## **90 Death or illness of jurors**

- (1) Where in the course of a trial—
  - (a) a juror dies; or
  - (b) the court is satisfied that it is for any reason inappropriate for any juror to continue to serve as a juror,the court may in its discretion, on an application made by the prosecutor or an accused, direct that the trial shall proceed before the remaining jurors (if they are not less than twelve in number), and where such direction is given the remaining jurors shall be deemed in all respects to be a properly constituted jury for the purpose of the trial

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and shall have power to return a verdict accordingly whether unanimous or, subject to subsection (2) below, by majority.

- (2) The remaining jurors shall not be entitled to return a verdict of guilty by majority unless at least eight of their number are in favour of such verdict and if, in any such case, the remaining jurors inform the court that—
- (a) fewer than eight of their number are in favour of a verdict of guilty; and
  - (b) there is not a majority in favour of any other verdict,
- they shall be deemed to have returned a verdict of not guilty.

### *Trial*

#### **91 Trial to be continuous**

Every trial shall proceed from day to day until it is concluded unless the court sees cause to adjourn over a day or days.

#### **92 Trial in presence of accused**

- (1) Without prejudice to section 54 of this Act, and subject to subsection (2) below, no part of a trial shall take place outwith the presence of the accused.
- (2) If during the course of his trial an accused so misconducts himself that in the view of the court a proper trial cannot take place unless he is removed, the court may order—
- (a) that he is removed from the court for so long as his conduct makes it necessary; and
  - (b) that the trial proceeds in his absence,
- but if he is not legally represented the court shall appoint counsel or a solicitor to represent his interests during such absence.
- (3) From the commencement of the leading of evidence in a trial for rape or the like the judge may, if he thinks fit, cause all persons other than the accused and counsel and solicitors to be removed from the court-room.

#### **93 Record of trial**

- (1) The proceedings at the trial of any person who, if convicted, is entitled to appeal under Part VIII of this Act, shall be recorded by means of shorthand notes or by mechanical means.
- (2) A shorthand writer shall—
- (a) sign the shorthand notes taken by him of such proceedings and certify them as being complete and correct; and
  - (b) retain the notes.
- (3) A person recording such proceedings by mechanical means shall—
- (a) certify that the record is true and complete;
  - (b) specify in the certificate the proceedings or, as the case may be, the part of the proceedings to which the record relates; and
  - (c) retain the record.

- (4) The cost of making a record under subsection (1) above shall be defrayed, in accordance with scales of payment fixed for the time being by Treasury, out of money provided by Parliament.
- (5) In subsection (1) above “proceedings at the trial” means the whole proceedings including, without prejudice to that generality—
  - (a) discussions—
    - (i) on any objection to the relevancy of the indictment;
    - (ii) with respect to any challenge of jurors; and
    - (iii) on all questions arising in the course of the trial;
  - (b) the decision of the court on any matter referred to in paragraph (a) above;
  - (c) the evidence led at the trial;
  - (d) any statement made by or on behalf of the accused whether before or after the verdict;
  - (e) the judge’s charge to the jury;
  - (f) the speeches of counsel or agent;
  - (g) the verdict of the jury;
  - (h) the sentence by the judge.

#### **94 Transcripts of record and documentary productions**

- (1) The Clerk of Justiciary may direct that a transcript of a record made under section 93(1) of this Act, or any part thereof, be made and delivered to him for the use of any judge.
- (2) Subject to subsection (3) below, the Clerk of Justiciary shall, if requested to do so by—
  - (a) the Secretary of State; or
  - (b) any other person on payment of such charges as may be fixed for the time being by Treasury,direct that such a transcript be made and sent to the person who requested it.
- (3) The Secretary of State may, after consultation with the Lord Justice General, by order made by statutory instrument provide that in any class of proceedings specified in the order the Clerk of Justiciary shall only make a direction under subsection (2)(b) above if satisfied that the person requesting the transcript is of a class of person so specified and, if purposes for which the transcript may be used are so specified, intends to use it only for such a purpose; and different purposes may be so specified for different classes of proceedings or classes of person.
- (4) Where subsection (3) above applies as respects a direction, the person to whom the transcript is sent shall, if purposes for which that transcript may be used are specified by virtue of that subsection, use it only for such a purpose.
- (5) A statutory instrument containing an order under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A direction under subsection (1) or (2) above may require that the transcript be made by the person who made the record or by such competent person as may be specified in the direction; and that person shall comply with the direction.
- (7) A transcript made in compliance with a direction under subsection (1) or (2) above—
  - (a) shall be in legible form; and

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- (b) shall be certified by the person making it as being a correct and complete transcript of the whole or, as the case may be, the part of the record purporting to have been made and certified, and in the case of shorthand notes signed, by the person who made the record.
- (8) The cost of making a transcript in compliance with a direction under subsection (1) or (2)(a) above shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of money provided by Parliament.
- (9) The Clerk of Justiciary shall, on payment of such charges as may be fixed for the time being by the Treasury, provide a copy of any documentary production lodged in connection with an appeal under this Part of this Act to such of the following persons as may request it—
- (a) the prosecutor;
  - (b) any person convicted in the proceedings;
  - (c) any other person named in, or immediately affected by, any order made in the proceedings; and
  - (d) any person authorised to act on behalf of any of the persons mentioned in paragraphs (a) to (c) above.

## **95 Verdict by judge alone**

- (1) Where, at any time after the jury has been sworn to serve in a trial, the prosecutor intimates to the court that he does not intend to proceed in respect of an offence charged in the indictment, the judge shall acquit the accused of that offence and the trial shall proceed only in respect of any other offence charged in the indictment.
- (2) Where, at any time after the jury has been sworn to serve in a trial, the accused intimates to the court that he is prepared to tender a plea of guilty as libelled, or such other plea as the Crown is prepared to accept, in respect of any offence charged in the indictment, the judge shall accept the plea tendered and shall convict the accused accordingly.
- (3) Where an accused is convicted under subsection (2) above of an offence—
- (a) the trial shall proceed only in respect of any other offence charged in the indictment; and
  - (b) without prejudice to any other power of the court to adjourn the case or to defer sentence, the judge shall not sentence him or make any other order competent following conviction until a verdict has been returned in respect of every other offence mentioned in paragraph (a) above.

## **96 Amendment of indictment**

- (1) No trial shall fail or the ends of justice be allowed to be defeated by reason of any discrepancy or variance between the indictment and the evidence.
- (2) It shall be competent at any time prior to the determination of the case, unless the court see just cause to the contrary, to amend the indictment by deletion, alteration or addition, so as to—
- (a) cure any error or defect in it;
  - (b) meet any objection to it; or
  - (c) cure any discrepancy or variance between the indictment and the evidence.

- (3) Nothing in this section shall authorise an amendment which changes the character of the offence charged, and, if it appears to the court that the accused may in any way be prejudiced in his defence on the merits of the case by any amendment made under this section, the court shall grant such remedy to the accused by adjournment or otherwise as appears to the court to be just.
- (4) An amendment made under this section shall be sufficiently authenticated by the initials of the clerk of the court.

#### **97 No case to answer**

- (1) Immediately after the close of the evidence for the prosecution, the accused may intimate to the court his desire to make a submission that he has no case to answer both—
  - (a) on an offence charged in the indictment; and
  - (b) on any other offence of which he could be convicted under the indictment.
- (2) If, after hearing both parties, the judge is satisfied that the evidence led by the prosecution is insufficient in law to justify the accused being convicted of the offence charged in respect of which the submission has been made or of such other offence as is mentioned, in relation to that offence, in paragraph (b) of subsection (1) above, he shall acquit him of the offence charged in respect of which the submission has been made and the trial shall proceed only in respect of any other offence charged in the indictment.
- (3) If, after hearing both parties, the judge is not satisfied as is mentioned in subsection (2) above, he shall reject the submission and the trial shall proceed, with the accused entitled to give evidence and call witnesses, as if such submission had not been made.
- (4) A submission under subsection (1) above shall be heard by the judge in the absence of the jury.

#### **98 Defence to speak last**

In any trial the accused or, where he is legally represented, his counsel or solicitor shall have the right to speak last.

#### **99 Seclusion of jury to consider verdict**

- (1) When the jury retire to consider their verdict, the clerk of court shall enclose the jury in a room by themselves and, except in so far as provided for, or is made necessary, by an instruction under subsection (4) below, neither he nor any other person shall be present with the jury after they are enclosed.
- (2) Except in so far as is provided for, or is made necessary, by an instruction under subsection (4) below, until the jury intimate that they are ready to return their verdict—
  - (a) subject to subsection (3) below, no person shall visit the jury or communicate with them; and
  - (b) no juror shall come out of the jury room other than to receive or seek a direction from the judge or to make a request—
    - (i) for an instruction under subsection (4)(a), (c) or (d) below; or
    - (ii) regarding any matter in the cause.

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- (3) Nothing in paragraph (a) of subsection (2) above shall prohibit the judge, or any person authorised by him for the purpose, communicating with the jury for the purposes—
  - (a) of giving a direction, whether or not sought under paragraph (b) of that subsection; or
  - (b) responding to a request made under that paragraph.
- (4) The judge may give such instructions as he considers appropriate as regards—
  - (a) the provision of meals and refreshments for the jury;
  - (b) the making of arrangements for overnight accommodation for the jury and for their continued seclusion if such accommodation is provided;
  - (c) the communication of a personal or business message, unconnected with any matter in the cause, from a juror to another person (or vice versa); or
  - (d) the provision of medical treatment, or other assistance, immediately required by a juror.
- (5) If the prosecutor or any other person contravenes the provisions of this section, the accused shall be acquitted of the crime with which he is charged.
- (6) During the period in which the jury are retired to consider their verdict, the judge may sit in any other proceedings; and the trial shall not fail by reason only of his so doing.

#### *Verdict and conviction*

### **100 Verdict of jury**

- (1) The verdict of the jury, whether the jury are unanimous or not, shall be returned orally by the foreman of the jury unless the court directs a written verdict to be returned.
- (2) Where the jury are not unanimous in their verdict, the foreman shall announce that fact so that the relative entry may be made in the record.
- (3) The verdict of the jury may be given orally through the foreman of the jury after consultation in the jury box without the necessity for the jury to retire.

### **101 Previous convictions: solemn proceedings**

- (1) Previous convictions against the accused shall not be laid before the jury, nor shall reference be made to them in presence of the jury before the verdict is returned.
- (2) Nothing in subsection (1) above shall prevent the prosecutor—
  - (a) asking the accused questions tending to show that he has been convicted of an offence other than that with which he is charged, where he is entitled to do so under section 266 of this Act; or
  - (b) leading evidence of previous convictions where it is competent to do so under section 270 of this Act,
 and nothing in this section or in section 69 of this Act shall prevent evidence of previous convictions being led in any case where such evidence is competent in support of a substantive charge.
- (3) 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 subsection (2) or (4) of section 69 of this Act.

- (4) On the conviction of the accused it shall be competent for the court, subject to subsection (5) below, to amend a notice of previous convictions so laid by deletion or alteration for the purpose of curing any error or defect.
- (5) An amendment made to the notice of previous convictions shall not be to the prejudice of the accused.
- (6) Any conviction which is admitted in evidence by the court shall be entered in the record of the trial.
- (7) Where a person is convicted of an offence, the court may have regard to any previous conviction in respect of that person in deciding on the disposal of the case.
- (8) Where any such intimation as is mentioned in section 69 of this Act is given by the accused, it shall be competent to prove any previous conviction included in a notice under that section in the manner specified in section 285 of this Act, and the provisions of the said section shall apply accordingly.

## **102 Interruption of trial for other proceedings**

- (1) When the jury have retired to consider their verdict, and the diet in another criminal cause has been called, then, subject to subsection (3) below, if it appears to the judge presiding at the trial to be appropriate, he may interrupt the proceedings in such other cause—
  - (a) in order to receive the verdict of the jury in the preceding trial, and thereafter to dispose of the case;
  - (b) to give a direction to the jury in the preceding trial upon any matter upon which the jury may wish a direction from the judge or to hear any request from the jury regarding any matter in the cause.
- (2) Where in any case the diet of which has not been called, the accused intimates to the clerk of court that he is prepared to tender a plea of guilty as libelled or such qualified plea as the Crown is prepared to accept, or where a case is remitted to the High Court for sentence, then, subject to subsection (3) below, any trial then proceeding may be interrupted for the purpose of receiving such plea or dealing with the remitted case and pronouncing sentence or otherwise disposing of any such case.
- (3) In no case shall any proceedings in the preceding trial take place in the presence of the jury in the interrupted trial, but in every case that jury shall be directed to retire by the presiding judge.
- (4) On the interrupted trial being resumed the diet shall be called *de novo*.
- (5) In any case an interruption under this section shall not be deemed an irregularity, nor entitle the accused to take any objection to the proceedings.