



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART VII

SOLEMN PROCEEDINGS

Pre-trial proceedings

74 Appeals in connection with preliminary diets.

- (1) Without prejudice [^{F1}to any right of appeal under section 106 or 108 a party may,] 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 [^{F2}hearing].
- (2) An appeal under subsection (1) above—
- (a) may not be taken against a decision to adjourn the first [^{F3}diet] or, as the case may be, preliminary [^{F4}hearing] or to [^{F5}accelerate or] postpone the trial diet;
 - [^{F6}(aza) may not be taken against a decision taken by virtue of section 35 of the Criminal Justice (Scotland) Act 2016;]
 - [^{F7}(aa) may not be taken against a decision taken by virtue of—
 - (i) in the case of a first diet, section 71(1A),
 - (ii) in the case of a preliminary [^{F8}hearing, section 72(6)(e)],of this Act;]
 - [^{F9}(ab) may not be taken against a decision at a preliminary hearing, in appointing a trial diet, to appoint or not to appoint it as a floating diet for the purposes of section 83A(2) of this Act;]
 - (b) must be taken not later than [^{F10}seven] days after the decision.
- [^{F11}(2A) An appeal under subsection (1) may be taken—
- (a) in the case of a decision to dismiss the indictment or any part of it, by the prosecutor without the leave of the court,
 - (b) in any other case, only with the leave of the court of first instance (granted on the motion of a party or ex proprio motu).]

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- (3) Where an appeal is taken under subsection (1) above, the High Court may postpone [^{F12}any trial diet that has been appointed] 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.
- [^{F13}(3A) Where an appeal is taken under subsection (1) above against a decision at a preliminary hearing, the High Court may adjourn, or further adjourn, the preliminary hearing 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; ^{F14} . . .
 - (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
 - [^{F15}(i) where the indictment is in respect of the High Court, a further preliminary hearing; or
 - (ii) where the indictment is in respect of the sheriff court,]

a trial diet, if it has not already fixed one as regards so much of the indictment as it has not dismissed.
 - [^{F16}(c) may on cause shown extend the period mentioned in section 65(1) of this Act.]

Textual Amendments

- F1** Words in s. 74(1) substituted (17.1.2017) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\), ss. 88\(a\), 117\(2\)](#); S.S.I. 2016/426, [art. 2, sch.](#)
- F2** Word in s. 74(1) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\), ss. 3\(2\), 27\(1\)](#); S.S.I. 2004/405, [art. 2, Sch. 1](#)
- F3** Word in s. 74(2)(a) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\), ss. 3\(3\)\(a\)\(i\), 27\(1\)](#); S.S.I. 2004/405, [art. 2, Sch. 1](#)
- F4** Word in s. 74(2)(a) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\), ss. 3\(3\)\(a\)\(ii\), 27\(1\)](#); S.S.I. 2004/405, [art. 2, Sch. 1](#)
- F5** Words in s. 74(2)(a) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\), ss. 25, 27\(1\), Sch. para. 22](#); S.S.I. 2004/405, [art. 2, Sch. 1](#) (subject to arts. 3-5)
- F6** S. 74(2)(aza) inserted (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\), s. 117\(2\), sch. 2 para. 32](#); S.S.I. 2017/345, [art. 3, sch.](#)
- F7** S. 74(2)(aa) inserted (1.4.2005 and 1.4.2006 for certain purposes and otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\), ss. 2\(4\), 25](#); S.S.I. 2005/168, [art. 2, Sch.](#) (with art. 4); S.S.I. 2006/59, [art. 2, Sch.](#) (with art. 4(1)); S.S.I. 2008/57, [art. 2](#) (with art. 3)
- F8** Words s. 74(2)(aa)(ii) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\), ss. 3\(3\)\(a\), 27\(1\)](#); S.S.I. 2004/405, [art. 2, Sch. 1](#)
- F9** S. 74(2)(ab) inserted (1.2.2005) after (aa) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\), ss. 3\(3\)\(c\), 27\(1\)](#); S.S.I. 2004/405, [art. 2, Sch. 1](#)
- F10** Word in s. 74(2)(b) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\), ss. 72\(2\), 206\(1\)](#); S.S.I. 2011/178, [art. 2, sch.](#)
- F11** S. 74(2A) inserted (17.1.2017) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\), ss. 88\(b\), 117\(2\)](#); S.S.I. 2016/426, [art. 2, sch.](#)
- F12** Words in s. 74(3) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\), ss. 3\(4\), 27\(1\)](#); S.S.I. 2004/405, [art. 2, Sch. 1](#)

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- F13** S. 74(3A) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 3(5), 27(1)**; S.S.I. 2004/405, **art. 2**, Sch. 1
- F14** Word in s. 74(4) repealed (1.8.1997) by 1997 c. 48, s. 62(1)(2), Sch. 1 para. 21(10)(a), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)
- F15** Words in s. 74(4)(b) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 3(6), 27(1)**; S.S.I. 2004/405, **art. 2**, Sch. 1
- F16** S. 74(4)(c) inserted (1.8.1997) by 1997 c. 48, s. 62(1)(2), **Sch. 1 para. 21(10)(b)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5A inserted by [2010 asp 13 Sch. 7 para. 26](#)
- s. 13(1B)(1C) inserted by [2006 asp 10 s. 82\(2\)](#)
- s. 13(2)(aa) inserted by [2006 asp 10 s. 82\(3\)\(b\)](#)
- s. 13(3A) inserted by [2006 asp 10 s. 82\(4\)](#)
- s. 13(5)(ba) inserted by [2006 asp 10 s. 82\(5\)\(a\)](#)
- s. 13(6)(a)(iii) and word inserted by [2006 asp 10 s. 82\(6\)\(b\)](#)
- s. 13(8) inserted by [2006 asp 10 s. 82\(7\)](#)
- s. 22(5A) inserted by [2007 asp 6 s. 7\(2\)\(g\)](#)
- s. 22A(1A) inserted by [2023 asp 4 s. 1\(2\)](#)
- s. 23B(1)(1A) substituted for s. 23B(1) by [2023 asp 4 s. 2\(2\)\(a\)](#)
- s. 23B(6A) inserted by [2023 asp 4 s. 1\(3\)\(c\)](#)
- s. 23B(8)-(10) inserted by [2023 asp 4 s. 2\(2\)\(c\)](#)
- s. 23C(1A) inserted by [2023 asp 4 s. 2\(3\)\(b\)](#)
- s. 23C(3) inserted by [2023 asp 4 s. 2\(3\)\(c\)](#)
- s. 24(2C) inserted by [2023 asp 4 s. 4\(4\)](#)
- s. 24(2AA) inserted by [2023 asp 4 s. 4\(2\)](#)
- s. 73A inserted by [2004 asp 3 s. 2\(3\)](#)
- s. 167(7D)(7E) inserted by [2007 asp 17 sch. 4 para. 1\(3\)](#)
- s. 167(7D) words substituted by [2010 asp 13 Sch. 3 para. 16\(2\)](#)
- s. 167(7E) words substituted by [2010 asp 13 Sch. 3 para. 16\(3\)](#)
- s. 194ZA repealed by [2014 asp 18 sch. 3 para. 25](#)
- s. 200A inserted by [2016 asp 1 s. 85](#)
- s. 205A added by [1997 c. 48 s. 1\(1\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by [2003 asp 7, s. 19\(3\)](#); S.S.I. 2003/288, art. 2, Sch.)
- s. 210ZA inserted by [2023 asp 4 s. 5](#)
- s. 249(4A)-(4D) inserted by [2014 asp 1 s. 24](#)
- s. 271D(4A) inserted by [2019 asp 8 s. 6\(4\)](#)
- s. 271F(2)(aa) inserted by [2019 asp 8 s. 10\(4\)](#)
- s. 271AA inserted by [2019 asp 8 s. 6\(2\)](#)
- s. 271BZD inserted by [2019 asp 8 s. 3\(2\)](#)
- s. 288AB288AC inserted by [2024 asp 1 s. 32\(3\)](#)
- Sch. 5A added by [1997 c. 48 s. 1\(2\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by [2003 asp 7, s. 19\(3\)](#); S.S.I. 2003/288, art. 2, Sch.)