



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PART II

SUMMARY PROCEDURE

Trial Procedure

334 Procedure at first diet, etc.

- (1) Where the accused is present at the first calling of the case in a summary prosecution, and—
 - (a) the complaint has been served on him, or
 - (b) the complaint or the substance thereof has been read to him, or
 - (c) he has legal assistance in his defence,he shall be asked to plead in common form, and he may, prior to pleading, state objections to the competency or relevancy of the complaint or the proceedings and no such objections shall be allowed to be stated at any future diet in the case except with the leave of the court, which may be granted only on cause shown.
- (2) Objections to the competency or relevancy of a summary complaint or the proceedings thereon may, in the absence of the accused, be stated by counsel or by a solicitor on his behalf, and where such objections are so stated the provisions of this Part of this Act shall apply in like manner as if the accused had appeared and stated the objections.
- (3) Where the accused is not present at a calling of the case in a summary prosecution and either—
 - (a) the prosecutor produces to the court written intimation that the accused pleads not guilty or pleads guilty and the court is satisfied that such written intimation has been made or authorised by the accused, or
 - (b) a solicitor, or a person not being a solicitor who satisfies the court that he is authorised by the accused, appears on behalf of the accused and tenders a plea of not guilty or a plea of guilty,

then—

Status: This is the original version (as it was originally enacted).

- (i) in the case of a plea of not guilty, the provisions of this Part of this Act except paragraph (a) of section 337 shall apply in like manner as if the accused had appeared and tendered the plea, and
 - (ii) in the case of a plea of guilty, the court may, if the prosecutor accepts the plea, proceed to hear and dispose of the case in the absence of the accused in like manner as if he had appeared and pled guilty, or may, if it thinks fit, continue the case to another diet and require the attendance of the accused with a view to pronouncing sentence in his presence.
- (4) Where in pursuance of paragraph (ii) of the last foregoing subsection the court proceeds to hear and dispose of a case in the absence of the accused, it shall not pronounce a sentence of imprisonment or of Borstal training or of detention in a detention centre, young offenders institution, remand centre, or other establishment.
- (5) In this section a reference to a plea of guilty shall include a reference to a plea of guilty to a part only of the charge:
- Provided that where such a plea is not accepted by the prosecutor it shall be deemed to be a plea of not guilty.
- (6) It shall not be competent for any person appearing to answer a complaint, or for a solicitor appearing for the accused in his absence, to plead want of due citation or informality therein or in the execution thereof.

335 Amendment of complaint

- (1) It shall be competent at any time prior to the determination of a summary prosecution, unless the court sees just cause to the contrary, to amend the complaint or any notice of penalty or previous conviction relative thereto by deletion, alteration or addition so as to cure any error or defect therein, or to meet any objection thereto, or to cure any discrepancy or variance between the complaint or notice and the evidence.
- (2) Nothing in this section shall authorise an amendment which changes the character of the offence charged, and if the court shall be of opinion 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 it shall think just.
- (3) An amendment made under this section shall be sufficiently authenticated by the initials of the clerk of court.

336 Plea of guilty

Where the accused in a summary prosecution pleads guilty to the charge or to any part thereof, and his plea is accepted by the prosecutor, the plea shall be recorded and signed by the judge or clerk of court, and the court shall thereafter dispose of the case at the same or any adjourned diet. The plea and sentence may be combined, in which case one signature shall be sufficient to authenticate both.

337 Plea of not guilty

Where the accused in a summary prosecution pleads not guilty to the charge or guilty to part only thereof, and the prosecutor does not accept such partial plea, the following provisions shall apply:—

- (a) the court may proceed to trial at once unless either party moves for an adjournment and the court shall adjudge it expedient to grant it; or
- (b) the court may adjourn the case for trial to as early a diet as is consistent with the just interest of both parties, in which case the prosecutor shall, if requested by the accused, furnish him with a copy of the complaint if he does not already have one ;
- (c) where the accused is brought before the court by apprehension he shall be entitled to an adjournment of the case for not less than 48 hours, if the request for such adjournment is made before the prosecutor has commenced his proof, and the court shall inform the accused of his right to such adjournment:

Provided that the case may proceed to trial at once or on a shorter adjournment than 48 hours if the court considers that necessary to secure the examination of witnesses who otherwise would not be available;

- (d) where the accused is in custody, he may be committed to prison or to legalised police cells or to any other place to which he may lawfully be committed pending trial either without bail or until he finds sufficient bail to appear at such adjourned diet and at all future diets of the case, and the amount of such bail shall be fixed in the minute of adjournment; or
- (e) the court may in any case where it shall judge it expedient, and whether or not the accused is in custody, instead of fixing bail as aforesaid, appoint the accused to attend at such adjourned diet under a penalty, not exceeding £10, in case he shall fail to appear;
- (f) the court may from time to time, and at any stage of the case, on the motion of either party or ex proprio motu grant such adjournment as may be necessary for the proper conduct of the case, and where from any cause a diet has to be continued from day to day it shall not be necessary to intimate such continuation to the accused;
- (g) it shall not be necessary for the prosecutor to establish a charge or part of a charge to which the accused pleads guilty;
- (h) the court may, in any case where it considers such a course expedient, permit any witness for the defence to be examined prior to evidence for the prosecution having been led or concluded, but in any such case the accused shall be entitled to lead additional evidence after the case for the prosecution is closed.

338 Failure of accused to appear

Where the accused in a summary prosecution fails to appear at any diet of which he has received intimation, or to which he has been cited, the following provisions shall apply:—

- (a) the court may adjourn the trial to another diet, and order the accused to attend at such diet, and appoint intimation thereof to be made to him, which intimation shall be sufficiently given by an officer of law, or by letter signed by the prosecutor and sent to the accused at his last known address by registered post or by the recorded delivery service, and the production in court of the written execution of such officer or of an acknowledgment or certificate of the delivery of the letter issued by the Post Office shall be sufficient evidence of such intimation having been duly given ;
- (b) where the accused is charged with any statutory offence for which a sentence of imprisonment cannot be imposed in the first instance, or where the statute

founded on or conferring jurisdiction authorises procedure in the absence of the accused, the court may, on the motion of the prosecutor and upon proof that the accused has been duly cited, or has received due intimation of the diet where such intimation has been ordered, proceed to hear and dispose of the case in the absence of the accused. Unless the statute founded on authorises conviction in default of appearance, proof of the complaint must be led to the satisfaction of the court. The court in any case to which this paragraph applies may, if it shall judge it expedient, allow any solicitor who satisfies the court that he has authority from the accused so to do, to appear and plead for and defend him ;

- (c) the court may grant warrant to apprehend the accused ;
- (d) the court may, on the motion of the prosecutor, forfeit any bail deposited or found for the appearance of the accused or, where the accused has been ordered to attend under a penalty, may declare such penalty to be forfeited, and such bail or penalty may, where necessary, be recovered in the manner provided in section 303 of this Act, and in addition to such forfeiture the court may grant warrant to apprehend the accused.

339 Alibi

It shall not be competent for the accused in a summary prosecution to found on a plea of alibi unless he gives, prior to the examination of the first witness for the prosecution, notice to the prosecutor of the plea with particulars as to time and place and of the witnesses by whom it is proposed to prove it. The prosecutor, on such notice being given, shall be entitled, if he so desires, to an adjournment of the case.

340 Examination of witness

In any trial, it shall be competent for the party against whom a witness is produced and sworn in causa to examine such witness, not in cross only, but also in causa.

341 Witnesses not to be excluded by reason of conviction, interest, etc.

- (1) No person adduced as a witness shall be excluded from giving evidence by reason of having been convicted of or having suffered punishment for crime, or by reason of interest, or by reason of agency or of partial counsel, or by reason of having appeared without citation or without having been duly cited to attend, or by reason of having been precognosced subsequently to the date of citation.
- (2) Every person so adduced, who is not otherwise by law disqualified from giving evidence, shall be admissible as a witness, notwithstanding any objection offered on any of the above-mentioned grounds.
- (3) Nothing in this section shall prevent such witness from being examined on any point tending to affect his credibility.
- (4) Where any person who is or has been an agent of the accused shall be adduced and examined as a witness for the accused, it shall not be competent to the accused to object, on the ground of confidentiality, to any question proposed to be put to such witness on matter pertinent to the issue of the guilt of the accused.

342 Witnesses admissible notwithstanding relationship to parties

It shall be no objection to the admissibility of any witness that he or she is the father, mother, son, daughter, brother or sister, by consanguinity or affinity, or uncle, aunt, nephew or niece, by consanguinity, of any party adducing such witness in any trial; nor shall it be competent to any witness to decline to be examined and give evidence on the ground of any such relationship.

343 Presence in court not to disqualify witnesses in certain cases

In any trial, the court need not reject any witness against whom it is objected that he has, without the permission of the court, and without the consent of the party objecting, been present in court during the proceedings; but the court may, in its discretion, admit the witness, where it appears to the court that the presence of the witness was not the result of culpable negligence or criminal intent, and that the witness has not been unduly instructed or influenced by what took place during his presence, or that injustice will not be done by his examination.

344 Punishment of witness for contempt

- (1) If a witness in a summary prosecution shall wilfully fail to attend after being duly cited, or unlawfully refuse to be sworn, or after the oath has been administered to him refuse to answer any question which the court may allow, or to produce documents in his possession when required by the court, or shall prevaricate in his evidence, he shall be deemed guilty of contempt of court and be liable to be summarily punished forthwith for such contempt by a fine not exceeding £25 or by imprisonment for any period not exceeding 20 days.
- (2) Where such punishment as aforesaid is summarily imposed, the clerk of court shall enter in the record of the proceedings the acts constituting the contempt or the statements forming the prevarication.
- (3) The foregoing provisions of this section shall be without prejudice to the prosecutor proceeding by way of formal complaint for any such contempt where such summary punishment, as above mentioned, is not imposed.
- (4) Any witness who, after being duly cited in accordance with section 315 of this Act—
 - (a) fails without reasonable excuse, after receiving at least 24 hours' notice, to attend for precognition by a prosecutor at the time and place mentioned in the citation served on him, or
 - (b) refuses when so cited to give information within his knowledge regarding any matter relative to the commission of the offence in relation to which such precognition is taken,shall be liable to the like punishment as is provided in the foregoing provisions of this section.

345 Administration of oath to same witness in cases at same diet

Where a witness in a summary prosecution is examined on oath in a case in which the accused is charged with an offence under any statute, and where the same witness is examined at the same diet in subsequent cause against the same or different persons accused of offences under the same statute, it shall not be necessary for the judge to

administer the oath to the witness in the subsequent cases, but it shall be sufficient that the judge shall remind him in each case that he is still on oath.

346 Accused and spouse competent witness for defence

The accused and the spouse of the accused shall be competent witnesses for the defence at every stage of the case, whether the accused is on trial alone or along with a co-accused:

Provided that—

- (a) the accused shall not be called as a witness in pursuance of this section except upon his own application;
- (b) the failure of the accused or the spouse of the accused to give evidence shall not be commented upon by the prosecution;
- (c) the spouse of the accused shall not, save as mentioned in section 348 of this Act, be called as a witness in pursuance of this section except upon the application of the accused;
- (d) nothing in this section or in section 348 of this Act shall compel a spouse to disclose any communication made to him or her by the other spouse during the marriage;
- (e) the accused who gives evidence on his own behalf in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged;
- (f) the accused who gives evidence on his own behalf in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless—
 - (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged ; or
 - (ii) the accused or his counsel or solicitor has asked questions of the witnesses for the prosecution with a view to establish the accused's good character, or the accused has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of of the prosecutor or of the witnesses for the prosecution ; or
 - (iii) the accused has given evidence against any other person charged with the same offence;
- (g) every person called as a witness in pursuance of this section or section 348 of this Act shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

347 Evidence of accused

Where the only witness to the facts of the case called by the defence is the accused, he shall be called as a witness immediately after the close of the evidence for the prosecution.

348 Spouse as witness in certain cases

- (1) The spouse of a person charged with—
- (a) bigamy,
 - (b) any offence mentioned in Schedule 1 to this Act, or
 - (c) any offence under any enactment mentioned in Schedule 4 to this Act,
- may be called as a witness either for the prosecution or for the defence without the consent of the person charged.
- (2) Nothing in this section or in section 141 or section 346 of this Act shall affect a case where the spouse of a person charged with an offence may at common law be called as a witness without the consent of that person.

349 Witness may be examined, etc., as to having previously made a different statement

In any trial, any witness may be examined as to whether he has on any specified occasion made a statement on any matter pertinent to the issue at the trial different from the evidence given by him in such trial; and in such trial evidence may be led to prove that such witness has made such different statement on the occasion specified.

350 Witness may be recalled

In any trial, on the motion of either party, the presiding judge may permit a witness who has been examined to be recalled.

351 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.

352 Declaration of accused

The declaration of the accused, the formal parts of which may be written or printed, or partly written and partly printed, duly authenticated by a justice as having been emitted before him according to the existing law and practice, shall be received in evidence without being sworn to by witnesses, either for the prosecution or for the accused, but it shall be competent for the accused, before such declaration is read to the court, to adduce as witnesses the persons who were present when the declaration was emitted, and to examine them upon any matters regarding such declaration on which it would be competent to examine them according to the existing law and practice, and to move the court to refuse to allow the declaration to be read on grounds appearing on the face of the declaration itself, or on the ground of what is disclosed in such evidence or on both of those grounds, and where the accused objects to the declaration, the prosecutor shall be entitled to examine any witnesses in regard thereto whom the accused may be entitled to examine as aforesaid.

353 Proof of official documents

- (1) Any letter, minute or other official document issuing from the office or in the custody of any of the departments of state or government in the United Kingdom the production of which in evidence is required in any summary prosecution, and which according

to the rules and regulations applicable to such departments may be competently produced, shall when produced be received as prima facie evidence of the matters contained in it without being produced or sworn to by any witness, and a copy thereof bearing to be certified by any person having authority to certify the same shall be treated as equivalent to the original, and no proof of the signature of the person certifying such copy, or of his authority to certify it, shall be necessary.

- (2) Any order by any of the departments of state or government or any local authority or public body made under powers conferred by any statute, or a print or copy of such order, shall when produced in a summary prosecution be received in evidence of the due making, confirmation, and existence of such order without being sworn to by any witness and without any further or other proof, but without prejudice to any right competent to the accused to challenge any such order as being ultra vires of the authority making it or on any other competent ground, and where any such order is referred to in the complaint it shall not be necessary to enter it in the record of the proceedings as a documentary production.
- (3) The provisions contained in this section shall be deemed to be in addition to, and not in derogation of, any powers of proving documents conferred by statute, or existing at common law.

354 Admissions by parties

- (1) It shall not be necessary in any summary prosecution for either party to lead proof of any fact which is admitted by the opposite party, or to prove any documents the terms and application of which are not in dispute, and copies of any documents may, by agreement of the parties, be accepted as equivalent to the originals:

Provided that this subsection shall not apply unless the accused has legal assistance in his defence.

- (2) Admissions or agreements under the foregoing subsection may be made by lodging with the clerk of court a minute signed by the person or persons making the same or by his or their counsel or solicitor, and any facts and documents so admitted or agreed shall be accepted as if they had been duly proved.

355 Judges equally divided

In a summary prosecution in a court consisting of more than one judge, if the judges are equally divided in opinion as to the guilt of the accused, the accused shall be found not guilty of the charge or part thereof on which such division of opinion exists.

356 Previous convictions

- (1) A previous conviction may not be libelled as an aggravation of an offence.
- (2) 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.
- (3) Nothing in this section shall affect the sentence which a court may pass on a second or subsequent conviction.

357 Laying of previous convictions before court

- (1) Where the accused in a summary prosecution has been previously convicted of any offence and the prosecutor has decided to lay a previous conviction before the court, the following provisions shall have effect:—
 - (a) a notice in the form, as nearly as may be, of Form No. 2 or 3 of Part III of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or of the appropriate form in an Act of Adjournal under this Act setting forth the previous conviction shall be served on the accused with the complaint where he is cited to a diet, and where he is in custody the complaint and such a notice shall be served on him before he is asked to plead;
 - (b) the previous conviction shall not be laid before the judge until he is satisfied that the charge is proved;
 - (c) if a plea of guilty is tendered or if, after a plea of not guilty, the accused is convicted the prosecutor shall lay the notice referred to in paragraph (a) of this subsection before the judge, and the judge or the clerk of court shall ask the accused whether he admits the previous conviction, and if such admission is made it shall be entered in the record of the proceedings;
 - (d) it shall not be necessary for the prosecutor to produce extracts of any previous convictions so admitted;
 - (e) where the accused does not admit any such previous conviction, the prosecutor unless he withdraws the conviction shall adduce evidence in proof thereof either then or at any other diet;
 - (f) a copy of any notice served on the accused under this subsection shall be entered in the record of the proceedings.
- (2) A conviction, or an extract conviction of any offence committed in any part of the United Kingdom, bearing to be under the hand of the officer in use to give out such extract conviction, shall be received in evidence without being sworn to by witnesses. An official of any prison in which the accused may have been confined on such conviction shall be a competent and sufficient witness to prove the application thereof to the accused, although such official may not have been present in court at the trial to which such conviction relates. This provision shall be without prejudice to any other competent mode of proving a conviction and the application thereof to the accused.
- (3) Where in any court a book of record is kept of the convictions in the court containing the like particulars as are inserted in an extract conviction, and where at the end of each day's proceedings the entries in such book are certified as correct by the judge or clerk of court, such entries shall, in any proceeding in that court, be accepted as evidence of such convictions.
- (4) Where the accused in a summary prosecution is convicted of any offence and also of any aggravation by previous conviction, and is again accused of any offence in regard to which such conviction may be competently used as an aggravation, the production of the prior conviction, or an extract thereof, setting forth the particulars of the previous convictions therein libelled, shall be admissible and sufficient evidence to prove against the accused all the previous convictions and aggravations therein set forth.
- (5) Nothing in this section shall prevent evidence of previous convictions being led in causa where such evidence is competent in support of a substantive charge.

358 Proof of previous convictions by fingerprints

- (1) A previous conviction may be proved against any person in any criminal proceedings by the production of such evidence of the conviction as is mentioned in this section and by showing that his fingerprints and those of the person convicted are the fingerprints of the same person.
- (2) A certificate purporting to be signed by or on behalf of the Chief Constable of Strathclyde or the Commissioner of Police of the Metropolis, containing particulars relating to a conviction extracted from the criminal records kept by the person by or on whose behalf the certificate is signed, and certifying that the copies of the fingerprints contained in the certificate are copies of the fingerprints appearing from the said records to have been taken in pursuance of regulations for the time being in force under section 11 of the Prisons (Scotland) Act 1952, or under section 16 of the Prison Act 1952, from the person convicted on the occasion of the conviction or on the occasion of his last conviction, shall be sufficient evidence of the conviction or, as the case may be, of his last conviction and of all preceding convictions and that the copies of the fingerprints produced on the certificate are copies of the fingerprints of the person convicted.
- (3) Where a person has been apprehended and detained in the custody of the police in connection with any criminal proceedings, a certificate purporting to be signed by the chief constable concerned or a person authorised on his behalf, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.
- (4) A certificate purporting to be signed by or on behalf of the governor of a prison or of a remand centre in which any person has been detained in connection with any criminal proceedings, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.
- (5) A certificate purporting to be signed by or on behalf of the Chief Constable of Strathclyde, and certifying that the fingerprints, copies of which are certified as aforesaid by or on behalf of the Chief Constable or the Commissioner of Police of the Metropolis to be copies of the fingerprints of a person previously convicted and the fingerprints certified by or on behalf of a chief constable or a governor as aforesaid, or otherwise shown, to be the fingerprints of the person against whom the previous conviction is sought to be proved, are the fingerprints of the same person, shall be sufficient evidence of the matter so certified.
- (6) The method of proving a previous conviction authorised by this section shall be in addition to any other method of proving the conviction.

359 Record

Proceedings in a summary prosecution shall be conducted summarily viva voce and, except where otherwise provided, no record need be kept of the proceedings other than the complaint, the plea, a note of any documentary evidence produced, and the conviction and sentence or other finding of the court:

Provided that any objections taken to the competency or relevancy of the complaint or proceedings, or to the competency or admissibility of evidence, shall, if either party desires it, be entered in the record of the proceedings.

360 Proceedings written or printed

Proceedings in a summary prosecution may be either in writing or printed, or may be partly written and partly printed, and all forms bearing reference to any antecedent form may be either on the same sheet of paper therewith or on a separate sheet attached to it.