



# Criminal Procedure (Scotland) Act 1975

## 1975 CHAPTER 21

### PROCEDURE PRIOR TO TRIAL

#### *Arrest, Judicial Examination, Custody, Bail, Etc.*

#### **[<sup>F1</sup>20A Accused at examination may be questioned by prosecutor.**

- (1) Subject to the following provisions of this section, an accused on being brought before the sheriff for examination on any charge (whether that examination is the first examination or a further examination) may be questioned by the prosecutor in so far as such questioning is directed towards eliciting any [<sup>F2</sup>admission,] denial, explanation, justification or comment which the accused may have as regards—

- (a) matters averred in the charge:

Provided that the particular aims of a line of questions under this paragraph shall be to determine—

- (i) whether any account which the accused can give ostensibly discloses a [<sup>F3</sup>defence]; and  
(ii) the nature and particulars of that defence;  
(b) the alleged making by the accused, to or in the hearing of an officer of police, of an extrajudicial confession (whether or not a full admission) relevant to the charge:

Provided that questions under this paragraph may only be put if the accused has, before the examination, received from the prosecutor or from an officer of police a written record of the confession allegedly made; or

- (c) what is said in any declaration emitted in regard to the charge by the accused at the examination.
- (2) The prosecutor shall, in framing questions in exercise of his power under subsection (1) above, have regard to the following principles—
- (a) the questions should not be designed to challenge the truth of anything said by the accused;

*Changes to legislation: Criminal Procedure (Scotland) Act 1975, Section 20A is up to date with all changes known to be in force on or before 30 April 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (b) there should be no reiteration of a question which the accused has refused to answer at the examination; and
  - (c) there should be no leading questions;
- and the sheriff shall ensure that all questions are fairly put to, and understood by, the accused.
- (3) The accused, where he is represented by a solicitor at the judicial examination, shall be told by the sheriff that he may consult that solicitor before answering any question.
- [ The accused shall be told by the sheriff that if he answers any question put to him at
- <sup>F4</sup>(3A) the examination under this section in such a way as to disclose an ostensible defence, the prosecutor shall be under the duty imposed by subsection (7) below.]
- (4) With the permission of the sheriff, the solicitor for the accused may ask the accused any question the purpose of which is to clarify any ambiguity in an answer given by the accused to the prosecutor at the examination or to give the accused an opportunity to answer any question which he has previously refused to answer.
- (5) An accused may decline to answer a question under subsection (1) above; and, where he is subsequently tried on the charge mentioned in that subsection or on any other charge arising out of the circumstances which gave rise to the charge so mentioned, his having so declined may be commented upon by the prosecutor, the judge presiding at the trial, or any co-accused, only where and in so far as the accused (or any witness called on his behalf) in evidence avers something which could have been stated appropriately in answer to that question.
- (6) The procedure in relation to examination under this section shall be prescribed by Act of Adjournal under this Act.
- [ Without prejudice to any rule of law, on the conclusion of an examination under this
- <sup>F5</sup>(7) section the prosecutor shall secure the investigation, to such extent as is reasonably practicable, of any ostensible defence disclosed in the course of the examination.
- (8) The duty imposed by subsection (7) above shall not apply as respects any ostensible defence which is not reasonably capable of being investigated.]]

#### Textual Amendments

- F1** Ss. 20A, 20B inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 6(2), **Sch. 6 para. 1**
- F2** Word in s. 20A(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 10(2)(a); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F3** Words in para. (i) to the proviso of s. 20A(1)(a) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 10(2)(b); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F4** S. 20A(3A) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 10(3); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F5** S. 20A(7)(8) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 10(4); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

**Changes to legislation:**

Criminal Procedure (Scotland) Act 1975, Section 20A is up to date with all changes known to be in force on or before 30 April 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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

- Act certain function transferred. by [1994 c. 39 s. 127\(1\)](#)[128](#)

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

- s. 168(c)(ii) amended (prosp.) by [1995 c. 36 s. 105\(4\)](#)[Sch. 4 para. 24\(6\)\(b\)](#)
- s. 364(c)(ii) amended (prosp.) by [1995 c. 36 s. 105\(4\)](#)[Sch. 4 para. 24\(14\)\(b\)](#)
- s. 413(3) (defn. of "the appropriate local authority") para. (a)(b) amended by [1994 c. 39 Sch. 13 para. 97\(5\)](#)
- s. 413(3) (defns. of "care" and "the 1968 Act") repealed (prosp.) by [1995 c. 36 s. 105\(4\)\(5\)](#)[Sch. 4 para. 24\(17\)\(b\)\(i\)](#)[Sch. 5](#)
- s. 462 (defns. of "child" "children's hearing" "place of safety" "residential establishment" and "supervision requirement") amended (prosp.) by [1995 c. 36 s. 105\(4\)](#)[Sch. 4 para. 24\(18\)](#)
- s. 462 (defns. of "crime" and "prosecutor") applied (prosp.) by [1995 c. 36 s. 53\(7\)](#)