



# 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 [<sup>F1</sup>(whether or not a diet fixed by virtue of section 333A of this Act)], and—
- the complaint has been served on him, or
  - the complaint or the substance thereof has been read to him, or
  - he has legal assistance in his defence,
- he shall [<sup>F2</sup>, unless the court adjourns (or further adjourns) the case under the said section 333A,] be asked to plead in common form, and he may, prior to pleading, state [<sup>F3</sup>an objection to the competency or relevancy of the complaint or the proceedings or issue a denial that he is the person charged by the police with the offence; and no such objection or denial shall be allowed to be stated or issued] at any future diet in the case except with the leave of the court, which may be granted only on cause shown.
- [<sup>F4</sup>(2) In the absence of the accused, an objection to the competency or relevancy of a summary complaint or the proceedings thereon may be stated, or a denial that the accused is the person charged by the police with the offence may be issued, by counsel or by a solicitor on his behalf; and where such an objection is stated or denial is issued, the provisions of this Part of this Act shall apply in like manner as if the accused had appeared and stated the objection or issued the denial.]
- [<sup>F5</sup>(2A) Without prejudice to any right of appeal under section 442 or 453A of this Act, a party may, with the leave of the court (granted either on the motion of that party or ex proprio motu) and in accordance with such procedure as may be prescribed by Act of Adjournal under this Act, appeal to the High Court against a decision of the court of first instance (other than a decision not to grant leave under this subsection) which

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*Changes to legislation: Criminal Procedure (Scotland) Act 1975, Section 334 is up to date with all changes known to be in force on or before 17 August 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*

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relates to such objection or denial as is mentioned in subsection (1) above; but such appeal must be taken not later than two days after such decision.

- (2B) Where an appeal is taken under subsection (2A) above, the High Court may postpone the trial diet (if one has been fixed) for such period as appears to them to be appropriate and may, if they think fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.
- (2C) If leave to appeal under subsection (2A) above is granted by the court it shall not proceed to trial at once under paragraph (a) of section 337 of this Act; and paragraph (b) of that section shall be construed as requiring sufficient time to be allowed for the appeal to be taken.
- (2D) In disposing of an appeal under subsection (2A) above the High Court may affirm the decision of the court of first instance or may remit the case to it with such directions in the matter as they think fit; and where the court of first instance had dismissed the complaint, 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 complaint as it has not dismissed.)]
- (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—
- (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.

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### Textual Amendments

- F1** Words in s. 334(1) inserted (18.9.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(30)(a)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(3), 4(1)(c), **Sch. 2**
- F2** Words in s. 334(1) inserted (18.9.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(30)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(3), 4(1)(c), **Sch. 2**
- F3** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 54(a)**
- F4** S. 334(2) substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 54(b)**
- F5** S. 334(2A)–(2D) inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 36, **Sch. 6 para. 1**

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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\(7\)](#)