



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART IV

PETITION PROCEDURE

Judicial examination

35 **Judicial examination.**

- (1) The accused's solicitor shall be entitled to be present at the examination.
 - (2) The sheriff may delay the examination for a period not exceeding 48 hours from and after the time of the accused's arrest, in order to allow time for the attendance of the solicitor.
 - (3) Where the accused is brought before the sheriff for examination on any charge and he or his solicitor intimates that he does not desire to emit a declaration in regard to such a charge, it shall be unnecessary to take a declaration, and, subject to section 36 of this Act, the accused may be committed for further examination or until liberated in due course of law without a declaration being taken.
 - (4) Nothing in subsection (3) above shall prejudice the right of the accused subsequently to emit a declaration on intimating to the prosecutor his desire to do so; and that declaration shall be taken in further examination.
- [^{F1}(4A) An accused charged with a sexual offence to which section 288C of this Act applies shall, as soon as he is brought before the sheriff for examination on the charge, be told—
- [^{F2}(a) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings may be conducted only by a lawyer,]
 - (b) that it is, therefore, in his interests, if he has not already done so, to get the professional assistance of a solicitor; and

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- (c) that, if he does not engage a solicitor for the purposes of [F3]the conduct of his case at or for the purposes of the[F4]hearing], the court will do so.
- (4B) A failure to comply with subsection (4A) above does not affect the validity or lawfulness of the examination or of any other element of the proceedings against the accused.]
- (5) Where, subsequent to examination or further examination on any charge, the prosecutor desires to question the accused as regards an extrajudicial confession, whether or not a full admission, allegedly made by him to or in the hearing of a constable, which is relevant to the charge and as regards which he has not previously been examined, the accused may be brought before the sheriff for further examination.
- (6) Where the accused is brought before the sheriff for further examination the sheriff may delay that examination for a period not exceeding 24 hours in order to allow time for the attendance of the accused’s solicitor.
- (7) Any proceedings before the sheriff in examination or further examination shall be conducted in chambers and outwith the presence of any co-accused.
- (8) This section applies to procedure on petition, without prejudice to the accused being tried summarily by the sheriff for any offence in respect of which he has been committed until liberated in due course of law.

Textual Amendments

- F1** S. 35(4A)(4B) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002](#) (asp 9), s. 3, [Sch. para. 3](#); S.S.I. 2002/443, [art. 3](#) (with art. 4(3))
- F2** S. 35(4A)(a) substituted for s. 35(4A)(za)(a) (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), s. 206(1), [sch. 7 para. 36\(a\)](#); S.S.I. 2011/178, art. 2, sch.
- F3** Words in s. 35(4A)(c) inserted (4.12.2004) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5), ss. 25, 27(1), [Sch. para. 12\(b\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)
- F4** Word in s. 35(4A)(c) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), s. 206(1), [sch. 7 para. 36\(b\)](#); S.S.I. 2011/178, art. 2, sch.

36 Judicial examination: questioning 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 the first or a further examination) may be questioned by the prosecutor in so far as such questioning is directed towards eliciting any admission, denial, explanation, justification or comment which the accused may have as regards anything to which subsections (2) to (4) below apply.
- (2) This subsection applies to matters averred in the charge, and the particular aims of a line of questions under this subsection shall be to determine—
- whether any account which the accused can give ostensibly discloses a defence; and
 - the nature and particulars of that defence.
- (3) This subsection applies to the alleged making by the accused, to or in the hearing of a constable, of an extrajudicial confession (whether or not a full admission) relevant to the charge, and questions under this subsection may only be put if the accused has,

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before the examination, received from the prosecutor or from a constable a written record of the confession allegedly made.

- (4) This subsection applies to what is said in any declaration emitted in regard to the charge by the accused at examination.
- (5) The prosecutor shall, in framing questions in exercise of his power under subsection (1) above, have regard to the following principles—
 - (a) the question should not be designed to challenge the truth of anything said by the accused;
 - (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.
- (6) The accused shall be told by the sheriff—
 - (a) where he is represented by a solicitor at the judicial examination, that he may consult that solicitor before answering any question; and
 - (b) that if he answers any question put to him at 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 (10) below.
- (7) 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.
- (8) 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.
- (9) The procedure in relation to examination under this section shall be prescribed by Act of Adjournal.
- (10) Without prejudice to any rule of law, on the conclusion of an examination under this 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.
- (11) The duty imposed by subsection (10) above shall not apply as respects any ostensible defence which is not reasonably capable of being investigated.

37 Judicial examination: record of proceedings.

- (1) The prosecutor shall provide for a verbatim record to be made by means of shorthand notes or by mechanical means of all questions to and answers and declarations by the accused in examination, or further examination, under sections 35 and 36 of this Act.
- (2) A shorthand writer shall—

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- (a) sign the shorthand notes taken by him of the questions, answers and declarations mentioned in subsection (1) above and certify the notes as being complete and correct; and
 - (b) retain the notes.
- (3) A person recording the questions, answers and declarations mentioned in subsection (1) above by mechanical means shall—
 - (a) certify that the record is true and complete;
 - (b) specify in the certificate the proceedings to which the record relates; and
 - (c) retain the record.
- (4) The prosecutor shall require the person who made the record mentioned in subsection (1) above, or such other competent person as he may specify, to make a transcript of the record in legible form; and that person shall—
 - (a) comply with the requirement;
 - (b) certify the transcript as being a complete and correct transcript 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; and
 - (c) send the transcript to the prosecutor.
- (5) A transcript certified under subsection (4)(b) above shall, subject to section 38(1) of this Act, be deemed for all purposes to be a complete and correct record of the questions, answers and declarations mentioned in subsection (1) above.
- (6) Subject to subsections (7) to (9) below, within 14 days of the date of examination or further examination, the prosecutor shall—
 - (a) serve a copy of the transcript on the accused examined; and
 - (b) serve a further such copy on the solicitor (if any) for that accused.
- (7) Where at the time of further examination a trial diet is already fixed and the interval between the further examination and that diet is not sufficient to allow of the time limits specified in subsection (6) above and subsection (1) of section 38 of this Act, the sheriff shall (either or both)—
 - (a) direct that those subsections shall apply in the case with such modifications as to time limits as he shall specify;
 - (b) subject to subsection (8) below, postpone the trial diet.
- (8) Postponement under paragraph (b) of subsection (7) above alone shall only be competent where the sheriff considers that to proceed under paragraph (a) of that subsection alone, or paragraphs (a) and (b) together, would not be practicable.
- (9) Any time limit mentioned in subsection (6) above and subsection (1) of section 38 of this Act (including any such time limit as modified by a direction under subsection (7) above) may be extended, in respect of the case, by the High Court [^{F5}; and an application to the High Court for any such extension shall be disposed of by the High Court or any Lord Commissioner of Justiciary in court or in chambers.]
- (10) A copy of—
 - (a) a transcript required by paragraph (a) of subsection (6) above to be served on an accused or by paragraph (b) of that subsection to be served on his solicitor; or
 - (b) a notice required by paragraph (a) of section 38(1) of this Act to be served on an accused or on the prosecutor,

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shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served such transcript or notice, together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of such a copy.

Textual Amendments

F5 Words in s. 37(9) added (1.12.1998) by S.I. 1998/2635, para. 2

38 Judicial examination: rectification of record of proceedings.

- (1) Subject to subsections (7) to (9) of section 37 of this Act, where notwithstanding the certification mentioned in subsection (5) of that section the accused or the prosecutor is of the opinion that a transcript served under paragraph (a) of subsection (6) of that section contains an error or is incomplete he may—
 - (a) within 10 days of service under the said paragraph (a), serve notice of such opinion on the prosecutor or as the case may be the accused; and
 - (b) within 14 days of service under paragraph (a) of this subsection, apply to the sheriff for the error or incompleteness to be rectified,and the sheriff shall within 7 days of the application hear the prosecutor and the accused in chambers and may authorise rectification.
- (2) Where—
 - (a) the person on whom notice is served under paragraph (a) of subsection (1) above agrees with the opinion to which that notice relates the sheriff may dispense with such hearing;
 - (b) the accused neither attends, nor secures that he is represented at, such hearing it shall, subject to paragraph (a) above, nevertheless proceed.
- (3) In so far as it is reasonably practicable so to arrange, the sheriff who deals with any application made under subsection (1) above shall be the sheriff before whom the examination or further examination to which the application relates was conducted.
- (4) Any decision of the sheriff, as regards rectification under subsection (1) above, shall be final.

39 Judicial examination: charges arising in different districts.

- (1) An accused against whom there are charges in more than one sheriff court district may be brought before the sheriff of any one such district at the instance of the procurator fiscal of such district for examination on all or any of the charges.
- (2) Where an accused is brought for examination as mentioned in subsection (1) above, he may be dealt with in every respect as if all of the charges had arisen in the district where he is examined.
- (3) This section is without prejudice to the power of the Lord Advocate under section 10 of this Act to determine the court before which the accused shall be tried on such charges.

Status:

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