



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART IX

#### SUMMARY PROCEEDINGS

##### *First diet*

#### 144 Procedure at first diet.

- (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, unless the court adjourns the case under the section 145 [<sup>F1</sup>or 145ZA] of this Act and subject to subsection (4) below, be asked to plead to the charge.
- (2) 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 <sup>F2</sup>. . .
  - (b) counsel or a solicitor, or a person not being counsel or 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,subsection (3) below shall apply.
- (3) Where this subsection applies—
  - (a) in the case of a plea of not guilty, this Part of this Act except section 146(2) shall apply in like manner as if the accused had appeared and tendered the plea; and
  - (b) 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

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the case to another diet and require the attendance of the accused with a view to pronouncing sentence in his presence.

- [<sup>F3</sup>(3ZA) Where the prosecutor is not satisfied, in relation to a written intimation of a plea—
- (a) that the intimation of the plea has been made or authorised by the accused; or
  - (b) that the terms of the plea are clear,
- the court may continue the case to another diet.
- (3ZB) The clerk of court may perform the functions of the court under—
- (a) subsections (2) and (3) above in relation to a plea of not guilty;
  - (b) subsection (3ZA) above,
- without the court being properly constituted.]
- [<sup>F4</sup>(3A) Where an accused charged with a sexual offence to which section 288C of this Act applies is present, whether or not with a solicitor, at a calling of the case in a summary prosecution, he shall be told—
- [<sup>F5</sup>(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
  - (c) that if he does not engage a solicitor for the purposes of [<sup>F6</sup>the conduct of his case at, or for the purposes of, the hearing], the court will do so.
- (3B) A failure to comply with subsection (3A) above does not affect the validity or lawfulness of anything done at the calling of the case or any other element of the proceedings against the accused.]
- (4) Any objection to the competency or relevancy of a summary complaint or the proceedings thereon, or any denial that the accused is the person charged by the police with the offence shall be stated before the accused pleads to the charge or any plea is tendered on his behalf.
  - (5) No objection or denial such as is mentioned in subsection (4) above 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.
  - (6) Where in pursuance of subsection (3)(b) above 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 detention in a young offenders institution, remand centre or other establishment.
  - (7) In this section a reference to a plea of guilty shall include a reference to a plea of guilty to only part of the charge, but where a plea of guilty to only part of a charge is not accepted by the prosecutor it shall be deemed to be a plea of not guilty.
  - (8) It shall not be competent for any person appearing to answer a complaint, or for counsel or a solicitor appearing for the accused in his absence, to plead want of due citation or informality therein or in the execution thereof.
  - (9) In this section, a reference to the first calling of a case includes a reference to any adjourned diet fixed by virtue of section 145 [<sup>F7</sup>, 145ZA][<sup>F8</sup>or 145A] of this Act.

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#### Textual Amendments

- F1** Words in s. 144(1) inserted (30.6.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 75\(a\)\(i\)](#), 79; S.S.I. 2007/334, [art. 2\(a\)](#), Sch. 1
- F2** Words in s. 144(2)(a) repealed (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 9\(1\)\(a\)](#), 84; S.S.I. 2007/479, [art. 3\(1\)](#), Sch. (as amended by S.S. I. 2007/527)
- F3** S. 144(3ZA)(3ZB) inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 9\(1\)\(b\)](#), 84; S.S.I. 2007/479, [art. 3\(1\)](#), Sch. (as amended by S.S. I. 2007/527)
- F4** S. 144(3A)(3B) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 3, [Sch. para. 9](#); S.S.I. 2002/443, [art. 3](#)
- F5** S. 144(3A)(a) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [sch. 7 para. 55\(a\)](#); S.S.I. 2011/178, art. 2, sch.
- F6** Words in s. 144(3A)(c) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [sch. 7 para. 55\(b\)](#); S.S.I. 2011/178, art. 2, sch.
- F7** Words in s. 144(9) inserted (30.6.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 75\(a\)\(ii\)](#), 79; S.S.I. 2007/334, [art. 2\(a\)](#), Sch. 1
- F8** Words in s. 144(9) inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), [ss. 63\(2\)](#), 89; S.S.I. 2003/288, [art. 2](#), Sch.

#### 145 Adjourment for inquiry at first calling.

- (1) [<sup>F9</sup>Where the accused is present] at the first calling of a case in a summary prosecution the court may, in order to allow time for inquiry into the case or for any other cause which it considers reasonable, adjourn the case under this section, for such period as it considers appropriate, without calling on the accused to plead to any charge against him but remanding him in custody or on bail or ordaining him to appear at the diet thus fixed; and, subject to subsections (2) and (3) below, the court may from time to time so adjourn the case.
- (2) Where the accused is remanded in custody, the total period for which he is so remanded under this section shall not exceed 21 days and no one period of adjournment shall, except on special cause shown, exceed 7 days.
- (3) Where the accused is remanded on bail or ordained to appear, no one period of adjournment shall exceed 28 days.

#### Textual Amendments

- F9** Words in s. 145(1) substituted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), [ss. 63\(3\)](#), 89; S.S.I. 2003/288, [art. 2](#), Sch.

#### [<sup>F10</sup>145Z] Adjourment where assessment order made at first calling

Where the accused is present at the first calling of a case in a summary prosecution the court may, where it makes an assessment order in respect of the accused, adjourn the case under this section for a period not exceeding 28 days without calling on the accused to plead to any charge against him; and the court may so adjourn the case for a further period not exceeding 7 days.]

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#### Textual Amendments

**F10** S. 145ZA inserted (30.6.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 75(b), 79**; S.S.I. 2007/334, **art. 2(a)**, Sch. 1

### [<sup>F11</sup>145A] **Adjournment at first calling to allow accused to appear etc.**

- (1) Without prejudice to section [<sup>F12</sup>150] of this Act, where the accused is not present at the first calling of the case in a summary prosecution, the court may (whether or not the prosecutor is able to provide evidence that the accused has been duly cited) adjourn the case under this section for such period as it considers appropriate; and subject to subsections (2) and (3) below, the court may from time to time so adjourn the case.
- (2) An adjournment under this section shall be—
  - (a) for the purposes of allowing—
    - (i) the accused to appear in answer to the complaint; or
    - (ii) time for inquiry into the case; or
  - (b) for any other cause the court considers reasonable.
- (3) No one period of adjournment under this section shall exceed 28 days.

[ The clerk of court may perform the functions of the court under subsection (1) above <sup>F13</sup>(4) without the court being properly constituted. ]

#### Textual Amendments

**F11** S. 145A inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **ss. 63(4), 89**; S.S.I. 2003/288, **art. 2**, Sch.

**F12** Words in s. 145A(1) substituted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 14(2), 84**; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S. I. 2007/527)

**F13** S. 145A(4) added (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 9(2), 84**; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S. I. 2007/527)

### 146 **Plea of not guilty.**

- (1) This section applies where the accused in a summary prosecution—
  - (a) pleads not guilty to the charge; or
  - (b) pleads guilty to only part of the charge and the prosecutor does not accept the partial plea.
- (2) The court may proceed to trial at once unless either party moves for an adjournment and the court considers it expedient to grant it.
- (3) The court may adjourn the case for trial to as early a diet as is consistent with the just interest of both parties, and the prosecutor shall, if requested by the accused, furnish him with a copy of the complaint if he does not already have one.

[<sup>F14</sup>(3ZA) Where a case is adjourned under subsection (3) above, the court shall intimate to the accused the trial diet assigned and any intermediate diet fixed.

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- (3ZB) When intimating a diet under subsection (3ZA) above, the court shall inform the accused that, if he fails to appear at any diet in the proceedings in respect of the case, the court might hear and dispose of the case in his absence.]
- [<sup>F15</sup>(3A) Where, under subsection (3) above, the prosecutor furnishes an accused charged with a sexual offence to which section 288C of this Act applies with a copy of the complaint, it shall be accompanied by a notice to the accused—
- [<sup>F16</sup>(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
  - (c) that, if he does not engage a solicitor for the purposes of [<sup>F17</sup>the conduct of his case at, or for the purposes of, the hearing], the court will do so.
- (3B) A failure to comply with subsection (3A) above does not affect the validity or lawfulness of any such copy complaint or any other element of the proceedings against the accused.]
- (4) Where the accused is brought before the court from custody the court shall inform the accused of his right to an adjournment of the case for not less than 48 hours and if he requests such adjournment before the prosecutor has commenced his proof, subject to subsection (5) below, the adjournment shall be granted.
- (5) Where the court considers that it is necessary to secure the examination of witnesses who otherwise would not be available, the case may proceed to trial at once or on a shorter adjournment than 48 hours.
- (6) 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—
- (a) if he is neither granted bail nor ordained to appear; or
  - (b) if he is granted bail on a condition imposed under section 24(6) of this Act that a sum of money is deposited in court, until the accused or a cautioner on his behalf has so deposited that sum.
- (7) The court may from time to time 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 the continuation to the accused.
- (8) It shall not be necessary for the prosecutor to establish a charge or part of a charge to which the accused pleads guilty.
- (9) The court may, in any case where it considers it 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.

#### Textual Amendments

- F14** S. 146(3ZA)(3ZB) added (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), **ss. 10, 84**; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S. I. 2007/527)
- F15** S. 146(3A)(3B) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002](#) (asp 9), s. 3, **Sch. para. 10**; S.S.I. 2002/443, **art. 3**

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- F16** S. 146(3A)(a) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **sch. 7 para. 56(a)**; S.S.I. 2011/178, art. 2, sch.
- F17** Words in s. 146(3A)(c) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **sch. 7 para. 56(b)**; S.S.I. 2011/178, art. 2, sch.

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