



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART IX

#### SUMMARY PROCEEDINGS

##### *Pre-trial procedure*

#### 147 Prevention of delay in trials.

- (1) Subject to subsections (2) and (3) below, a person charged with an offence in summary proceedings shall not be detained in that respect for a total of more than 40 days after the bringing of the complaint in court unless his trial is commenced within that period, failing which he shall be liberated forthwith and thereafter he shall be for ever free from all question or process for that offence.
- (2) The sheriff may, on application made to him for the purpose, extend the period mentioned in subsection (1) above and order the accused to be detained awaiting trial for such period as he thinks fit where he is satisfied that delay in the commencement of the trial is due to—
  - (a) the illness of the accused or of a judge;
  - (b) the absence or illness of any necessary witness; or
  - (c) any other sufficient cause which is not attributable to any fault on the part of the prosecutor.
- (3) The grant or refusal of any application to extend the period mentioned in subsection (1) above may be appealed against by note of appeal presented to the High Court; and that Court may affirm, reverse or amend the determination made on such application.
- (4) For the purposes of this section, a trial shall be taken to commence when the first witness is sworn.

*Status: Point in time view as at 10/12/2007.*

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#### Modifications etc. (not altering text)

- C1** S. 147 applied (with modifications) (1.10.1997) by S.I. 1997/1776, art. 2, **Sch. 1 paras. 5-7**; S.I. 1997/2200, **arts. 1, 2** (subject to transitional provisions in art. 5)
- S. 147 extended (1.10.1997) by 1997 c. 43, s. 41, **Sch. 1 Pt. II para. 10(1)(a)**; S.I. 1997/2200, **art. 2** (subject to transitional provisions in art. 5)
- S. 147 modified (1.10.1997) by 1997 c. 43, s. 41, **Sch. 1 Pt. II para. 11(1)(a)**; S.I. 1997/2200, **art. 2** (subject to transitional provisions in art. 5)

### 148 Intermediate diet.

- (1) [<sup>F1</sup>The court may, when adjourning a case for trial in terms of section 146(3) of this Act, and may also, at any time thereafter, whether before, on or after any date assigned as a trial diet], fix a diet (to be known as an intermediate diet) for the purpose of ascertaining, so far as is reasonably practicable, whether the case is likely to proceed to trial on [<sup>F1</sup>any date assigned as a trial diet] and, in particular—
- (a) the state of preparation of the prosecutor and of the accused with respect to their cases;
  - (b) whether the accused intends to adhere to the plea of not guilty; and
  - [<sup>F2</sup>(ba) how many witnesses are required by—
    - (i) the prosecutor;
    - (ii) the accused,
 to attend the trial;]
  - (c) the extent to which the prosecutor and the accused have complied with the duty under section 257(1) of this Act.
- [<sup>F3</sup>(1A) At an intermediate diet in summary proceedings in the sheriff court, the court shall also—
- (a) ascertain whether subsection (1B) below applies to any person who is to give evidence at or for the purposes of the trial or to the accused, and
  - (b) if so, consider whether it should make an order under section 271A(7) or 271D(2) of this Act in relation to person or, as the case may be, the accused.
- (1B) This subsection applies—
- (a) to a person who is to give evidence at or for the purposes of the trial if that person is, or is likely to be, a vulnerable witness,
  - (b) to the accused if, were he to give evidence at or for the purposes of the trial, he would be, or would be likely to be, a vulnerable witness.]
- (2) Where at an intermediate diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—
- (a) [<sup>F4</sup>may] postpone the trial diet; and
  - (b) may fix a further intermediate diet.
- (3) [<sup>F5</sup>The] court may, if it considers it appropriate to do so, adjourn an intermediate diet.
- [<sup>F6</sup>(3A) At an intermediate diet, the court may consider an application for the purposes of subsection (1) of section 275 of this Act; and, notwithstanding subsection (1) above, the court may fix a diet under that subsection for the purpose only of considering such an application.

*Status: Point in time view as at 10/12/2007.*

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- (3B) Subsection (3A) above shall not operate so as to relieve any court prescribed by order under subsection (7) below of its duty, which arises by virtue of the operation of that subsection, to fix an intermediate diet for the purpose mentioned in subsection (1) above.]
- [<sup>F7</sup>(4) At an intermediate diet, the court shall make such enquiry of the parties as is reasonably required for the purposes of subsections (1) and (3A) above.]
- (5) The accused shall attend an intermediate diet of which he has received intimation or to which he has been cited unless—
- (a) he is legally represented; and
  - (b) the court considers that there are exceptional circumstances justifying him not attending.
- (6) A plea of guilty may be tendered at the intermediate diet.
- (7) The foregoing provisions of this section shall have effect as respects any court prescribed by the Secretary of State by order, in relation to proceedings commenced after such date as may be so prescribed, with the following modifications—
- (a) in subsection (1), for the word “may” [<sup>F8</sup>where it first appears,] there shall be substituted “ shall, subject to subsection (1A) below, ”; and
  - (b) after subsection (1) there shall be inserted the following subsections—
- “(1A) If, on a joint application by the prosecutor and the accused made at any time before the commencement of the intermediate diet, the court considers it inappropriate to have such a diet, the duty under subsection (1) above shall not apply and the court shall discharge any such diet already fixed.
- (1B) The court may consider an application under subsection (1A) above without hearing the parties.”.
- (8) An order under subsection (7) above shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F1** Words in s. 148(1) substituted (retrospective to 1.4.1996) by 1998 c. 10, s. 1(1)(a)(i)(ii)(2)
- F2** S. 148(1)(ba) inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 18(a), 84; S.S.I. 2007/479, art. 3(1), Sch. (as amended by S.S. I. 2007/527)
- F3** S. 148(1A)(1B) inserted (1.4.2007 for certain purposes and otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), ss. 2(5)(a), 25; S.S.I. 2007/101, art. 2, Sch. (with art. 4); S.S.I. 2008/57, art. 2 (with art. 3)
- F4** Words in s. 148(2)(a) substituted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 18(b), 84; S.S.I. 2007/479, art. 3(1), Sch. (as amended by S.S. I. 2007/527)
- F5** Word in s. 148(3) substituted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 18(c), 84; S.S.I. 2007/479, art. 3(1), Sch. (as amended by S.S. I. 2007/527)
- F6** S. 148(3A)(3B) inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), s. 8(5)(a); S.S.I. 2002/443, art. 3 (with art. 4(5))
- F7** S. 148(4) substituted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 18(d), 84; S.S.I. 2007/479, art. 3(1), Sch. (as amended by S.S. I. 2007/527)
- F8** Words in s. 148(7)(a) inserted (retrospective to 1.4.1996) by 1998 c. 10, s. 1(1)(b)(2)

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**[<sup>F9</sup>148A Interim diet: sexual offence to which section 288C of this Act applies**

- (1) Where, in a case which is adjourned for trial, the charge is of committing a sexual offence to which section 288C of this Act applies, the court shall order that, before the trial diet, there shall be a diet under this section and ordain the accused then to attend.
- (2) At a diet under this section, the court shall ascertain whether or not the accused has engaged a solicitor for the purposes of his defence at the trial.
- (3) Where, following inquiries for the purposes of subsection (2) above, it appears to the court that the accused has not engaged a solicitor for the purposes of his defence at his trial, it may adjourn the diet under this section for a period of not more than 48 hours and ordain the accused then to attend.
- (4) A diet under this section may be conjoined with an intermediate diet.
- (5) A court may, at a diet under this section, postpone the trial diet.
- (6) The court may dispense with a diet under this section previously ordered, but only if a solicitor engaged by the accused for the purposes of the defence of the accused at the trial has, in writing—
  - (a) confirmed his engagement for that purpose; and
  - (b) requested that the diet be dispensed with.
- (7) Where—
  - (a) a solicitor has requested, under subsection (6) above, that a diet under this section be dispensed with; and
  - (b) before that diet has been held or dispensed with, the solicitor—
    - (i) is dismissed by the accused; or
    - (ii) withdraws,
 the solicitor shall forthwith inform the court in writing of those facts.
- (8) It is the duty of a solicitor who—
  - (a) was engaged for the purposes of the defence of the accused at the trial—
    - (i) at the time of a diet under this section; or
    - (ii) in the case of a diet which, under subsection (6) above, is dispensed with, at the time when it was so dispensed with; and
  - (b) after that time but before the trial diet—
    - (i) is dismissed by the accused; or
    - (ii) withdraws,
 forthwith to inform the court in writing of those facts.
- (9) On being so informed, the court shall order a further diet under this section.]

**Textual Amendments**

**F9** S. 148A inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 3, [Sch. para. 11](#); [S.S.I. 2002/443](#), [art. 3](#)

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### [<sup>F10</sup>148B Pre-trial procedure in sheriff court where no intermediate diet is fixed

- (1) Where, in any summary proceedings in the sheriff court, no intermediate diet is fixed, the court shall, at the trial diet before the first witness is sworn—
  - (a) ascertain whether subsection (2) below applies to any person who is to give evidence at or for the purposes of the trial or to the accused and, if so, consider whether it should make an order under section 271A(7) or 271D(2) of this Act in relation to the person or, as the case may be, the accused, and
  - (b) if—
    - (i) section 288E of this Act applies to the proceedings, or
    - (ii) an order under section 288F(2) has been made in the proceedings, ascertain whether or not the accused has engaged a solicitor for the purposes of his defence at the trial.
- (2) This subsection applies—
  - (a) to a person who is to give evidence at or for the purposes of the trial if that person is, or is likely to be, a vulnerable witness,
  - (b) to the accused if, were he to give evidence at or for the purposes of the trial, he would be, or be likely to be, a vulnerable witness.
- (3) Where, following inquiries for the purposes of subsection (1)(b) above, it appears to the court that the accused has not engaged a solicitor for the purposes of his defence at the trial, the court may adjourn the trial diet for a period of not more than 48 hours and ordain the accused then to attend.
- (4) At the trial diet, the court may ask the prosecutor and the accused any question in connection with any matter which it is required to ascertain or consider under subsection (1) above.]

#### Textual Amendments

**F10** S. 148B inserted (1.4.2007 for certain purposes and otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\), ss. 9, 25](#); S.S.I. 2007/101, [art. 2](#) (with [art. 4](#)); S.S.I. 2008/57, [art. 2](#) (with [art. 3](#))

### [<sup>F11</sup>148C Engagement, dismissal and withdrawal of solicitor representing accused

- (1) In summary proceedings, it is the duty of a solicitor who is engaged by the accused for the purposes of his defence at trial to notify the court and the prosecutor of that fact forthwith in writing.
- (2) The duty under subsection (1) above shall be regarded as having been complied with if the solicitor has represented the accused at the first calling of the case—
  - (a) by submitting a written intimation of the accused's plea as described in subsection (2)(a) of section 144 of this Act; or
  - (b) by appearing on behalf of the accused—
    - (i) as described in subsection (2)(b) of that section; or
    - (ii) with the accused present,and has, when acting as described in paragraph (a) or (b) above, notified the court and the prosecutor orally or in writing that the solicitor is also engaged by the accused for the purposes of his defence at trial.

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(3) Where a solicitor referred to in subsection (1) above—

- (a) is dismissed by the accused; or
- (b) withdraws,

it is the duty of the solicitor to notify the court and the prosecutor of that fact forthwith in writing.

#### Textual Amendments

**F11** Ss. 148C, 148D inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 21, 84](#); [S.S.I. 2007/479](#), [art. 3\(1\)](#), Sch. (as amended by [S.S.I. 2007/527](#))

### 148D Service etc. on accused through a solicitor

(1) In summary proceedings, anything which is to be served on or given, notified or otherwise intimated to, the accused (except service of a complaint) shall be taken to be so served, given, notified or intimated if it is, in such form and manner as may be prescribed by Act of Adjournal, served on or given, notified or intimated to (as the case may be) the solicitor described in subsection (2) below at that solicitor's place of business.

(2) That solicitor is any solicitor—

- (a) who—
  - (i) has given notice under subsection (1) of section 148C of this Act that that solicitor is engaged by the accused for the purposes of the accused's defence at the trial; and
  - (ii) has not given notice under subsection (3) of that section;
- (b) who has represented the accused as mentioned in subsection (2) of that section; and—
  - (i) has given notice as mentioned in that subsection; and
  - (ii) has not given notice under subsection (3) of that section; or
- (c) who—
  - (i) has been appointed to act for the purposes of the accused's defence at the trial under section 150A(4)(b) or (7) or 288D of this Act; and
  - (ii) has not been relieved of the appointment by the court.]

#### Textual Amendments

**F11** Ss. 148C, 148D inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 21, 84](#); [S.S.I. 2007/479](#), [art. 3\(1\)](#), Sch. (as amended by [S.S.I. 2007/527](#))

### [<sup>F15</sup>149B Notice of defences

(1) It is not competent for an accused in a summary prosecution to found on a defence to which this subsection applies unless—

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- (a) notice of the defence has been given to the prosecutor in accordance with subsection (5) below; or
  - (b) the court, on cause shown, allows the accused to found on the defence despite the failure so to give notice of it.
- (2) Subsection (1) above applies—
- (a) to a special defence;
  - (b) to a defence which may be made out by leading evidence calculated to exculpate the accused by incriminating a co-accused;
  - (c) to a defence of automatism or coercion;
  - (d) in a prosecution for an offence to which section 288C of this Act applies, to a defence of consent.
- (3) In subsection (2)(d) above, the reference to a defence of consent is a reference to the defence which is stated by reference to the complainer's consent to the act which is the subject matter of the charge or the accused's belief as to that consent.
- (4) In subsection (3) above, “complainer” has the same meaning as in section 274 of this Act.
- (5) Notice of a defence is given in accordance with this subsection if it is given—
- (a) where an intermediate diet is to be held, at or before that diet; or
  - (b) where such a diet is not to be held, no later than 10 clear days before the trial diet,
- together with the particulars mentioned in subsection (6) below.
- (6) The particulars are—
- (a) in relation to a defence of alibi, particulars as to time and place; and
  - (b) in relation to that or any other defence, particulars of the witnesses who may be called to give evidence in support of the defence.
- (7) Where notice of a defence to which subsection (1) above applies is given to the prosecutor, the prosecutor is entitled to an adjournment of the case.
- (8) The entitlement to an adjournment under subsection (7) above may be exercised whether or not—
- (a) the notice was given in accordance with subsection (5) above;
  - (b) the entitlement could have been exercised at an earlier diet.]

#### Textual Amendments

**F15** S. 149B substituted (10.12.2007) for ss. 149, 149A by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 19, 84**; [S.S.I. 2007/479](#), art. 3(1), Sch. (subject to art. 7) (as amended by [S.S.I. 2007/527](#))

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