Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART IX

SUMMARY PROCEEDINGS

Trial diet

152 Desertion of diet.

(1) It shall be competent at the diet of trial, at any time before the first witness is sworn, for the court, on the application of the prosecutor, to desert the diet *pro loco et tempore.*

(2) If, at a diet of trial, the court refuses an application by the prosecutor to adjourn the trial or to desert the diet*pro loco et tempore*, and the prosecutor is unable or unwilling to proceed with the trial, the court shall desert the diet *simpliciter*.

(3) Where the court has deserted a diet *simpliciter* under subsection (2) above (and the court's decision in that regard has not been reversed on appeal), it shall not be competent for the prosecutor to raise a fresh libel.

[[F1]152A Complaints triable together

(1) Where—

(a) two or more complaints against an accused call for trial in the same court on the same day; and

(b) they each contain one or more charges to which the accused pleads not guilty,

the prosecutor may apply to the court for those charges to be tried together at that diet despite the fact that they are not all contained in the one complaint.

(2) On an application under subsection (1) above, the court is to try those charges together if it appears to the court that it is expedient to do so.

(3) For the purposes of subsections (1) and (2) above, any other charges contained in the complaints are (without prejudice to further proceedings as respects those other charges) to be disregarded.

(4) Where charges are tried together under this section, they are to be treated (including, in particular, for the purposes of and in connection with the leading of evidence, proof and verdict) as if they were contained in one complaint.

(5) But the complaints mentioned in subsection (1)(a) above are, for the purposes of further proceedings (including as to sentence), to be treated as separate complaints.**]**

Textual Amendments

F1 S. 152A inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 13**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S. I. 2007/527)

153 Trial in presence of accused.

(1) **[**[F2]Subject to section 150A of this Act and**]** subsection (2) below, no part of a trial shall take place outwith the presence of the accused.

(2) If during the course of his trial an accused so misconducts himself that in the view of the court a proper trial cannot take place unless he is removed, the court may order—

(a) that he is removed from the court for so long as his conduct makes it necessary; and

(b) that the trial proceeds in his absence,

but if he is not legally represented the court shall appoint counsel or a solicitor to represent his interests during such absence.

Textual Amendments

F2 Words in s. 153(1) substituted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 14(5)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S. I. 2007/527)

[F3]154 . . . . . .

Textual Amendments

F3 S. 154 repealed (1.8.1997) by 1997 c. 48, ss. 28(1), 62(2), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

155 Punishment of witness for contempt.

(1) If a witness in a summary prosecution—

(a) wilfully fails to attend after being duly cited; or

(b) unlawfully refuses to be sworn; or

(c) after the oath has been administered to him refuses to answer any question which the court may allow; or

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(d) prevaricates in his evidence,

he shall be deemed guilty of contempt of court and be liable to be summarily punished forthwith for such contempt by a fine not exceeding level 3 on the standard scale or by imprisonment for any period not exceeding 21 days.

(2) Where punishment is summarily imposed as mentioned in subsection (1) above, the clerk of court shall enter in the record of the proceedings the acts constituting the contempt or the statements forming the prevarication.

(3) Subsections (1) and (2) above are without prejudice to the right of the prosecutor to proceed by way of formal complaint for any such contempt where a summary punishment, as mentioned in the said subsection (1), is not imposed.

(4) Any witness who, having been duly cited in accordance with section 140 of this Act—

(a) fails without reasonable excuse, after receiving at least 48 hours' notice, to attend for precognition by a prosecutor at the time and place mentioned in the citation served on him; or

(b) refuses when so cited to give information within his knowledge regarding any matter relative to the commission of the offence in relation to which such precognition is taken,

shall be liable to the like punishment as is provided in subsection (1) above.

[[F4]156 Apprehension of witness.

(1) In any summary proceedings, the court may, on the application of any of the parties, issue a warrant for the apprehension of a witness if subsection (2) or (3) below applies in relation to the witness.

(2) This subsection applies if the witness, having been duly cited to any diet in the proceedings, deliberately and obstructively fails to appear at the diet.

(3) This subsection applies if the court is satisfied by evidence on oath that the witness is being deliberately obstructive and is not likely to attend to give evidence at any diet in the proceedings without being compelled to do so.

(4) For the purposes of subsection (2) above, a witness who, having been duly cited to any diet, fails to appear at the diet is to be presumed, in the absence of any evidence to the contrary, to have so failed deliberately and obstructively.

(5) An application under subsection (1) above—

(a) may be made orally or in writing;

(b) if made in writing—

(i) shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form; and

(ii) may be disposed of in court or in chambers after such enquiry or hearing (if any) as the court considers appropriate.

(6) A warrant issued under this section shall be in such form as may be prescribed by Act of Adjournal or as nearly as may be in such form.

(7) A warrant issued under this section in the form mentioned in subsection (6) above shall imply warrant to officers of law—

(a) to search for and apprehend the witness in respect of whom it is issued;

(b) to bring the witness before the court;

(c) in the meantime, to detain the witness in a police station, police cell or other convenient place; and

(d) so far as necessary for the execution of the warrant, to break open shut and lockfast places.

(8) It shall not be competent in summary proceedings for a court to issue a warrant for the apprehension of a witness otherwise than in accordance with this section.

(9) Section 135(3) of this Act makes provision as to bringing before the court a person apprehended under a warrant issued under this section.

(10) In this section and section 156A, "the court" means the court in which the witness is to give evidence.**]**

Textual Amendments

F4 Ss. 156-156D substituted (10.3.2008) for s. 156 by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 16**, 84; S.S.I. 2008/42, **art. 3**, Sch.

Modifications etc. (not altering text)

C1 S. 156 applied (26.4.2004) by Crime (International Co-operation) Act 2003 (c. 32), ss. 15, 30, 31, 94, **Sch. 1 para. 2**, **Sch. 2 para. 2**; S.I. 2004/786, **art. 3**

[F5 156A Orders in respect of witnesses apprehended under section 156

(1) Where a witness is brought before the court in pursuance of a warrant issued under section 156 of this Act, the court shall, after giving the parties and the witness an opportunity to be heard, make an order—

(a) detaining the witness until the conclusion of the diet at which the witness is to give evidence;

(b) releasing the witness on bail; or

(c) liberating the witness.

(2) The court may make an order under subsection (1)(a) or (b) above only if it is satisfied that—

(a) the order is necessary with a view to securing that the witness appears at the diet at which the witness is to give evidence; and

(b) it is appropriate in all the circumstances to make the order.

(3) Whenever the court makes an order under subsection (1) above, it shall state the reasons for the terms of the order.

(4) Subsection (1) above is without prejudice to any power of the court to—

(a) make a finding of contempt of court in respect of any failure of a witness to appear at a diet to which he has been duly cited; and

(b) dispose of the case accordingly.

(5) Where—

(a) an order under subsection (1)(a) above has been made in respect of a witness; and

(b) at, but before the conclusion of, the diet at which the witness is to give evidence, the court in which the diet is being held excuses the witness,

that court, on excusing the witness, may recall the order under subsection (1)(a) above and liberate the witness.

(6) On making an order under subsection (1)(b) above in respect of a witness, the court shall impose such conditions as it considers necessary with a view to securing that the witness appears at the diet at which he is to give evidence.

(7) However, the court may not impose as such a condition a requirement that the witness or a cautioner on his behalf deposit a sum of money in court.

(8) Section 25 of this Act shall apply in relation to an order under subsection (1)(b) above as it applies to an order granting bail, but with the following modifications—
   (a) references to the accused shall be read as if they were references to the witness in respect of whom the order under subsection (1)(b) above is made;
   (b) references to the order granting bail shall be read as if they were references to the order under subsection (1)(b) above;
   (c) subsection (3) shall be read as if for the words from "relating" to "offence" in the third place where it occurs there were substituted " at which the witness is to give evidence ".**]**

Textual Amendments

F5 Ss. 156-156D substituted (10.3.2008) for s. 156 by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 16**, 84; S.S.I. 2008/42, **art. 3**, Sch.

[F6 156B Breach of bail under section 156A(1)(b)

(1) A witness who, having been released on bail by virtue of an order under subsection (1)(b) of section 156A of this Act, fails without reasonable excuse—
   (a) to appear at any diet to which he has been cited; or
   (b) to comply with any condition imposed under subsection (6) of that section,

   shall be guilty of an offence and liable on summary conviction to the penalties specified in subsection (2) below.

(2) Those penalties are—
   (a) a fine not exceeding level 3 on the standard scale; and
   (b) imprisonment for a period—
      (i) where conviction is in the JP court, not exceeding 60 days;
      (ii) where conviction is in the sheriff court, not exceeding 12 months.

(3) In any proceedings in relation to an offence under subsection (1) above, the fact that (as the case may be) a person—
   (a) was on bail;
   (b) was subject to any particular condition of bail;
   (c) failed to appear at a diet;
   (d) was cited to a diet,

   shall, unless challenged by preliminary objection before his plea is recorded, be held as admitted.

(4) Section 28 of this Act shall apply in respect of a witness who has been released on bail by virtue of an order under section 156A(1)(b) of this Act as it applies to an accused released on bail, but with the following modifications—

(a) references to an accused shall be read as if they were references to the witness;

(b) in subsection (2), the reference to the court to which the accused's application for bail was first made shall be read as if it were a reference to the court which made the order under section 156A(1)(b) of this Act in respect of the witness;

(c) in subsection (4)—

(i) references to the order granting bail and original order granting bail shall be read as if they were references to the order under section 156A(1)(b) of this Act and the original such order respectively;

(ii) paragraph (a) shall be read as if at the end there were inserted " and make an order under section 156A(1)(a) or (c) of this Act in respect of the witness ";

(iii) paragraph (c) shall be read as if for the words from "complies" to the end there were substituted " appears at the diet at which the witness is to give evidence ".**]**

Textual Amendments

F6 Ss. 156-156D substituted (10.3.2008) for s. 156 by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 16**, 84; S.S.I. 2008/42, **art. 3**, Sch.

Modifications etc. (not altering text)

C2 S. 156B(2)(b)(i) applied (10.12.2007) by The District Courts and Justices of the Peace (Scotland) Order 2007 (S.S.I. 2007/480), **art. 4(1)(c)**

[F7 156C Review of orders under section 156A(1)(a) or (b)

(1) Where a court has made an order under subsection (1)(a) of section 156A of this Act, the court may, on the application of the witness in respect of whom the order was made and after giving the parties and the witness an opportunity to be heard—

(a) recall the order; and

(b) make an order under subsection (1)(b) or (c) of that section in respect of the witness.

(2) Where a court has made an order under subsection (1)(b) of section 156A of this Act, the court may, after giving the parties and the witness an opportunity to be heard—

(a) on the application of the witness in respect of whom the order was made—

(i) review the conditions imposed under subsection (6) of that section at the time the order was made; and

(ii) make a new order under subsection (1)(b) of that section and impose different conditions under subsection (6) of that section;

(b) on the application of the party who made the application under section 156(1) of this Act in respect of the witness, review the order and the conditions imposed under subsection (6) of section 156A of this Act at the time the order was made, and—

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(i) recall the order and make an order under subsection (1)(a) of that section in respect of the witness; or

(ii) make a new order under subsection (1)(b) of that section and impose different conditions under subsection (6) of that section.

(3) The court may not review an order by virtue of subsection (1) or (2) above unless—

(a) in the case of an application by the witness, the circumstances of the witness have changed materially; or

(b) in that or any other case, the witness or party making the application puts before the court material information which was not available to it when it made the order which is the subject of the application.

(4) An application under this section by a witness—

(a) where it relates to the first order made under section 156A(1)(a) or (b) of this Act in respect of the witness, shall not be made before the fifth day after that order is made;

(b) where it relates to any subsequent such order, shall not be made before the fifteenth day after the order is made.

(5) On receipt of an application under subsection (2)(b) above the court shall—

(a) intimate the application to the witness in respect of whom the order which is the subject of the application was made;

(b) fix a diet for hearing the application and cite the witness to attend the diet; and

(c) where it considers that the interests of justice so require, grant warrant to arrest the witness.

(6) Nothing in this section shall affect any right of a person to appeal against an order under section 156A(1).**]**

Textual Amendments

F7 Ss. 156-156D substituted (10.3.2008) for s. 156 by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 16**, 84; S.S.I. 2008/42, **art. 3**, Sch.

[F8156D Appeals in respect of orders under section 156A(1)

(1) Any of the parties specified in subsection (2) below may appeal to the **[F9**Sheriff Appeal Court**]** against—

(a) any order made under subsection (1)(a) or (c) of section 156A of this Act;

(b) where an order is made under subsection (1)(b) of that section—

(i) the order;

(ii) any of the conditions imposed under subsection (6) of that section on the making of the order; or

(iii) both the order and any such conditions.

(2) The parties referred to in subsection (1) above are—

(a) the witness in respect of whom the order which is the subject of the appeal was made;

(b) the prosecutor; and

(c) the accused.

(3) A party making an appeal under subsection (1) above shall intimate it to the other parties specified in subsection (2) above; and, for that purpose, intimation to the Crown Agent shall be sufficient intimation to the prosecutor.

(4) An appeal under this section shall be disposed of by **[**[F10]Sheriff Appeal Court or any Appeal Sheriff**]** in court or in chambers after such enquiry and hearing of the parties as shall seem just.

(5) Where the witness in respect of whom the order which is the subject of an appeal under this section was made is under 21 years of age, section 51 of this Act shall apply to the **[**[F11]Sheriff Appeal Court or, as the case may be, Appeal Sheriff**]** when disposing of the appeal as it applies to a court when remanding or committing a person of the witness's age for trial and sentence.**]**

Textual Amendments

F8 Ss. 156-156D substituted (10.3.2008) for s. 156 by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 16**, 84; S.S.I. 2008/42, **art. 3**, Sch.

F9 Words in s. 156D(1) substituted (22.9.2015) by The Courts Reform (Scotland) Act 2014 (Consequential Provisions No. 2) Order 2015 (S.S.I. 2015/338), art. 1, **sch. 2 para. 5(5)(a)** (with art. 4)

F10 Words in s. 156D(4) substituted (22.9.2015) by The Courts Reform (Scotland) Act 2014 (Consequential Provisions No. 2) Order 2015 (S.S.I. 2015/338), art. 1, **sch. 2 para. 5(5)(b)** (with art. 4)

F11 Words in s. 156D(5) substituted (22.9.2015) by The Courts Reform (Scotland) Act 2014 (Consequential Provisions No. 2) Order 2015 (S.S.I. 2015/338), art. 1, **sch. 2 para. 5(5)(c)** (with art. 4)

157 Record of proceedings.

(1) Proceedings in a summary prosecution shall be conducted summarily *viva voce* and, except where otherwise provided and subject to subsection (2) below, no record need be kept of the proceedings other than the complaint, or a copy of the complaint certified as a true copy by the procurator fiscal, the plea, a note of any documentary evidence produced, and the conviction and sentence or other finding of the court.

(2) Any objection taken to the competency or relevancy of the complaint or proceedings, or to the competency or **[**[F12](subject to subsection (3) below)**]** admissibility of evidence, shall, if either party desires it, be entered in the record of the proceedings.

[[F13](3) An application for the purposes of subsection (1) of section 275 of this Act, together with the court's decision on it, the reasons stated therefor and any conditions imposed and directions issued under subsection (7) of that section shall be entered in the record of the proceedings.**]**

Textual Amendments

F12 Words in s. 157(2) inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), **s. 8(6)(a)**; S.S.I. 2002/443, **art. 3** (with art. 4(5))

F13 S. 157(3) inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), **s. 8(6)(b)**; S.S.I. 2002/443, **art. 3** (with art. 4(5))

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158 Interruption of summary proceedings for verdict in earlier trial.

Where the sheriff is sitting in summary proceedings during the period in which the jury in a criminal trial in which he has presided are retired to consider their verdict, it shall be lawful, if he considers it appropriate to do so, to interrupt those proceedings—

(a) in order to receive the verdict of the jury and dispose of the cause to which it relates;

(b) to give a direction to the jury on any matter on which they may wish one from him, or to hear a request from them regarding any matter,

and the interruption shall not affect the validity of the proceedings nor cause the instance to fall in respect of any person accused in the proceedings.

159 Amendment of complaint.

(1) It shall be competent at any time prior to the determination of the case, unless the court see just cause to the contrary, to amend the complaint or any notice of previous conviction relative thereto by deletion, alteration or addition, so as to—

(a) cure any error or defect in it;

(b) meet any objection to it; or

(c) cure any discrepancy or variance between the complaint or notice and the evidence.

(2) Nothing in this section shall authorise an amendment which changes the character of the offence charged, and, if it appears to the court that the accused may in any way be prejudiced in his defence on the merits of the case by any amendment made under this section, the court shall grant such remedy to the accused by adjournment or otherwise as appears to the court to be just.

(3) An amendment made under this section shall be sufficiently authenticated by the initials of the clerk of the court.

160 No case to answer.

(1) Immediately after the close of the evidence for the prosecution, the accused may intimate to the court his desire to make a submission that he has no case to answer both—

(a) on an offence charged in the complaint; and

(b) on any other offence of which he could be convicted under the complaint were the offence charged the only offence so charged.

(2) If, after hearing both parties, the judge is satisfied that the evidence led by the prosecution is insufficient in law to justify the accused being convicted of the offence charged in respect of which the submission has been made or of such other offence as is mentioned, in relation to that offence, in paragraph (b) of subsection (1) above, he shall acquit him of the offence charged in respect of which the submission has been made and the trial shall proceed only in respect of any other offence charged in the complaint.

(3) If, after hearing both parties, the judge is not satisfied as is mentioned in subsection (2) above, he shall reject the submission and the trial shall proceed, with the accused entitled to give evidence and call witnesses, as if such submission had not been made.

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161 Defence to speak last.

In any trial the accused or, where he is legally represented, his counsel or solicitor shall have the right to speak last.

Status:
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Changes to legislation:
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