



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VII

#### SOLEMN PROCEEDINGS

##### *The indictment*

#### **64 Prosecution on indictment.**

- (1) All prosecutions for the public interest before the High Court or before the sheriff sitting with a jury shall proceed on indictment in name of Her Majesty's Advocate.
- (2) The indictment may be in the forms—
  - (a) set out in Schedule 2 to this Act; or
  - (b) prescribed by Act of Adjournal,or as nearly as may be in such form.
- (3) Indictments in proceedings before the High Court shall be signed by the Lord Advocate or one of his deutes.
- (4) Indictments in proceedings before the sheriff sitting with a jury shall be signed by the procurator fiscal, and the words "By Authority of Her Majesty's Advocate" shall be prefixed to the signature of the procurator fiscal.
- (5) The principal record and service copies of indictments and all notices of citation, lists of witnesses, productions and jurors, and all other official documents required in a prosecution on indictment may be either written or printed or partly written and partly printed.
- (6) Schedule 3 to this Act shall have effect as regards indictments under this Act.

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## 65 Prevention of delay in trials.

- (1) Subject to subsections (2) and (3) below, an accused shall not be tried on indictment for any offence unless
- [<sup>F1</sup>(a) where an indictment has been served on the accused in respect of the High Court, a preliminary hearing is commenced within the period of 11 months; and
  - (b) in any case, the trial is commenced within the period of 12 months, of the first appearance of the accused on petition in respect of the offence.]
- [<sup>F2</sup>(1A) If the preliminary hearing (where subsection (1)(a) above applies) or the trial is not so commenced,] the accused
- [<sup>F3</sup>(a) shall be discharged forthwith from any indictment as respects the offence; and
  - (b) shall not at any time be proceeded against on indictment as respects the offence]
- (2) Nothing in subsection (1) [<sup>F4</sup>or (1A)] above shall bar the trial of an accused for whose arrest a warrant has been granted for failure to appear at a diet in the case.
- (3) On an application made for the purpose,
- [<sup>F5</sup>(a) where an indictment has been served on the accused in respect of the High Court, a single judge of that court may, on cause shown, extend either or both of the periods of 11 and 12 months specified in subsection (1) above; or
  - (b) in any other case, the sheriff may, on cause shown, extend the period of 12 months specified in that subsection.]
- [<sup>F6</sup>(3A) An application under subsection (3) shall not be made at any time when an appeal made with leave under section 74(1) of this Act has not been disposed of by the High Court.]
- (4) Subject to subsections (5) to (9) below, an accused who is committed for any offence until liberated in due course of law shall not be detained by virtue of that committal for a total period of more than—
- (a) 80 days, unless within that period the indictment is served on him, which failing he shall be [<sup>F7</sup>entitled to be admitted to bail] ; or
  - [<sup>F8</sup>(aa) where an indictment has been served on the accused in respect of the High Court—
    - (i) 110 days, unless a preliminary hearing in respect of the case is commenced within that period, which failing he shall be entitled to be admitted to bail; or
    - (ii) 140 days, unless the trial of the case is commenced within that period, which failing he shall be entitled to be admitted to bail;]
  - (b) [<sup>F9</sup>where an indictment has been served on the accused in respect of the sheriff court,] 110 days, unless the trial of the case is commenced within that period, which failing he shall be [<sup>F10</sup>entitled to be admitted to bail].
- [<sup>F11</sup>(4A) Where an indictment has been served on the accused in respect of the High Court, subsections (1)(a) and (4)(aa)(i) above shall not apply if the preliminary hearing has been dispensed with under section 72B(1) of this Act.]
- [<sup>F12</sup>(5) On an application made for the purpose—

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- (a) in a case where, at the time the application is made, an indictment has not been served on the accused, a single judge of the High Court; or
- (b) in any other case, the court specified in the notice served under section 66(6) of this Act,

may, on cause shown, extend any period mentioned in subsection (4) above.

(5A) Before determining an application under subsection (3) or (5) above, the judge or, as the case may be, the court shall give the parties an opportunity to be heard.

(5B) However, where all the parties join in the application, the judge or, as the case may be, the court may determine the application without hearing the parties and, accordingly, may dispense with any hearing previously appointed for the purpose of considering the application.]

(6) <sup>F13</sup> .....

(7) <sup>F13</sup> .....

(8) The grant or refusal of any application to extend the periods mentioned in this section 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.

[<sup>F14</sup>(8A) Where an accused is, by virtue of subsection (4) above, entitled to be admitted to bail, the accused shall, unless he has been admitted to bail by the Lord Advocate, be brought forthwith before—

- (a) in a case where an indictment has not yet been served on the accused, a single judge of the High Court; or
- (b) in any other case, the court specified in the notice served under section 66(6) of this Act.

(8B) Where an accused is brought before a judge or court under subsection (8A) above, the judge or, as the case may be, the court shall give the prosecutor an opportunity to make an application under subsection (5) above.

(8C) If the prosecutor does not make such an application or, if such an application is made but is refused, the judge or, as the case may be, the court shall, after giving the prosecutor an opportunity to be heard, admit the accused to bail.

(8D) Where such an application is made but is refused and the prosecutor appeals against the refusal, the accused—

- (a) may continue to be detained under the committal warrant for no more than 72 hours from the granting of bail under subsection (8C) above or for such longer period as the High Court may allow; and
- (b) on expiry of that period, shall, whether the appeal has been disposed of or not, be released on bail subject to the conditions imposed.]

(9) For the purposes of this section,

- [<sup>F15</sup>(a) where the accused is cited in accordance with subsection (4)(b) of section 66 of this Act, the indictment shall be deemed to have been served on the accused;
- (b) a preliminary hearing shall be taken to commence when it is called; and
- (c)] a trial shall be taken to commence when the oath is administered to the jury.

(10) In calculating the [<sup>F16</sup>periods of 11 and] months specified in subsections (1) and (3) above there shall be left out of account any period during which the accused is detained, other than while serving a sentence of imprisonment or detention, in any

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other part of the United Kingdom or in any of the Channel Islands or the Isle of Man in any prison or other institution or place mentioned in subsection (1) or (1A) of section 29 of the <sup>M1</sup>Criminal Justice Act 1961 (transfer of prisoners for certain judicial purposes).

#### Textual Amendments

- F1** S. 65(1)(a)(b)(1A) substituted (1.2.2005) for words by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 6(2)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F2** S. 65(1)(a)(b)(1A) substituted (1.2.2005) for words by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 6(2)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F3** S. 65(1)(a)(b) substituted (4.7.1996) for words by 1996 c. 25, **s. 73(3)** (with s. 78(1))
- F4** Words in s. 65(2) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 6(3)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F5** S. 65(3)(a)(b) substituted (1.2.2005) for words by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 6(4)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F6** S. 65(3A) inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(9)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)
- F7** Words in s. 65(4)(a) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 6(5)(a)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F8** S. 65(4)(aa) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 6(5)(b)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F9** Words in s. 65(4)(b) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 6(5)(c)(i)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F10** Words in s. 65(4)(b) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 6(5)(c)(ii)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F11** S. 65(4A) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 6(6)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F12** S. 65(5)-(5B) substituted (1.2.2005) for s. 65(5) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 6(7)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F13** S. 65(6)(7) repealed (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 6(8)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F14** S. 65(8A)-(8D) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 6(9)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F15** Words in s. 65(9) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 6(10)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F16** Words in s. 65(10) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 6(11)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

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

- C1** S. 65 extended (1.10.1997) by 1997 c. 43, s. 41, **Sch. 1 Pt. II para. 10(1)(a)**; S.I. 1997/2200, **art. 2(1)(g)**
- C2** S. 65 modified (1.10.1997) by 1997 c. 43, s. 41, **Sch. 1 Pt. II para. 11(1)(a)**; S.I. 1997/2200, **art. 2(1)(g)** (subject to transitional provisions in art. 5)
- C3** S. 65 applied (with modifications) (1.10.1997) by S.I. 1997/1776, arts. 1, 2, **Sch. 1 paras. 5-7**; S.I. 1997/2200, **art. 2(1)(g)** (subject to transitional provisions in art. 5)

#### Marginal Citations

- M1** 1961 c.39.

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## 66 Service and lodging of indictment, etc.

[<sup>F17</sup>(1) This Act shall be sufficient warrant for—

- (a) the citation of the accused and witnesses to—
  - (i) any diet of the High Court to be held on any day, and at any place, the Court is sitting;
  - (ii) any diet of the sheriff court to be held on any day the court is sitting; or
  - (iii) any adjournment of a diet specified in sub-paragraph (i) or (ii) above; and
- (b) the citation of jurors for any trial to be held—
  - (i) in the High Court; or
  - (ii) under solemn procedure in the sheriff court.]

(2) The execution of the citation against an accused, witness or juror shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form.

(3) A witness may be cited by sending the citation to the witness by ordinary or registered post or by the recorded delivery service and a written execution in the form prescribed by Act of Adjournal or as nearly as may be in such form, purporting to be signed by the person who served such citation together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such citation.

[<sup>F18</sup>(4) The accused may be cited either—

- (a) by being served with a copy of the indictment and of the list of the names and addresses of the witnesses to be adduced by the prosecution [<sup>F19</sup> and of the list of productions (if any) to be put in evidence by the prosecution]; or
- (b) [<sup>F20</sup>if the accused, at the time of citation, is not in custody,] by a constable affixing to the door of the [<sup>F21</sup>relevant premises] a notice in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form—
  - (i) specifying the date on which it was so affixed;
  - (ii) informing the accused that he may collect a copy of the indictment and of such [<sup>F22</sup>lists as are] mentioned in paragraph (a) above from a police station specified in the notice; and
  - (iii) calling upon him to appear and answer to the indictment at such diet as shall be so specified.

[<sup>F23</sup>(4ZA) In subsection (4)(b) above, “the relevant premises” means—

- (a) where the accused, at the time of citation, has been admitted to bail, his proper domicile of citation as specified for the purposes of section 25 of this Act; or
- (b) in any other case, any premises which the constable reasonably believes to be the accused’s dwelling-house or place of business.]

(4A) Where a date is specified by virtue of sub-paragraph (i) of subsection (4)(b) above, that date shall be deemed the date on which the indictment is served; and the copy of the indictment referred to in sub-paragraph (ii) of that subsection shall, for the purposes of subsections (12) and (13) below be deemed the service copy.

(4B) Paragraphs (a) and (b) of subsection (6) below shall apply for the purpose of specifying a diet by virtue of subsection (4)(b)(iii) above as they apply for the purpose of specifying a diet in any notice under subsection (6).]

[<sup>F24</sup>(4C) Where—

- (a) the accused is cited in accordance with subsection (4)(b) above; and

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(b) the charge in the indictment is of committing a sexual offence to which section 288C of this Act applies,

the accused shall, on collecting the indictment, be given a notice containing intimation of the matters specified in subsection (6A)(a) below.]

(5) Except in a case to which section 76 of this Act applies, the prosecutor shall on or before the date of service of the indictment lodge the record copy of the indictment with the clerk of court before which the trial is to take place, together with a copy of the list of witnesses and a copy of the list of productions.

(6) <sup>F25</sup>If the accused is cited by being served with a copy of the indictment, then except where such service is] under section 76(1) of this Act, a notice shall be served on the accused with the indictment calling upon him to appear and answer to the indictment—

(a) where the case is to be tried in the sheriff court

<sup>F26</sup>(i) at a first diet not less than 15 clear days after the service of the indictment and not less than 10 clear days before the trial diet <sup>F27</sup>; and

(ii) at a trial diet not less than 29 clear days after service of the indictment,]

<sup>F28</sup>(b) where the indictment is in respect of the High Court, at a diet not less than 29 clear days after the service of the indictment (such a diet being referred to in this Act as a “preliminary hearing”).]

<sup>F29</sup>(6A) Where the charge in the indictment is of committing a sexual offence to which section 288C of this Act applies, the notice served under subsection (6) above shall—

(a) contain intimation to the accused—

[ where the case is to be tried in the High Court, that his case at or for <sup>F30</sup>(zi) the purposes of the preliminary hearing may be conducted only by a lawyer;]

(i) that, if he is tried for the offence, his defence <sup>F31</sup>(including at any commissioner proceedings)]<sup>F32</sup> and any proof ordered as is mentioned in section 288C(1) of this Act] may be conducted only by a lawyer;

(ii) that it is, therefore, in his interests, if he has not already done so, to get the professional assistance of a solicitor; and

(iii) that if he does not engage a solicitor for the purposes of <sup>F33</sup>the conduct of his case at or for the purposes of the preliminary hearing or] his defence at the trial <sup>F34</sup>(or at any related commissioner proceedings)], the court will do so; <sup>F35</sup> . . .

(b) <sup>F35</sup> . . . . .

<sup>F36</sup>(6AA) [ A notice affixed under subsection (4)(b) above or served under subsection (6) above shall, where the accused is a body corporate, also contain intimation to the accused—

(a) where the indictment is in respect of the High Court, that, if it does not appear as mentioned in section 70(4) of this Act or by counsel or a solicitor at the preliminary hearing—

(i) the hearing may proceed; and

(ii) a trial diet may be appointed,

in its absence; and

(b) in any case (whether the indictment is in respect of the High Court or the sheriff court), that if it does not appear as mentioned in paragraph (a) above at the trial diet, the trial may proceed in its absence.]

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- (6B) A failure to comply with subsection [F37(4C), (6A) or (6AA)] above does not affect the validity or lawfulness of any [F38notice affixed under subsection (4)(b) above or served under subsection (6) above] or any other element of the proceedings against the accused.]
- [F39(6C) An accused shall be taken to be served with—
- (a) the indictment and lists of witnesses and productions; and
  - (b) the notice referred to in subsection (6) above,
- if they are served on the solicitor specified in subsection (6D) below at that solicitor’s place of business.
- (6D) The solicitor referred to in subsection (6C) above is any solicitor who—
- (a) has notified in writing the procurator fiscal for the district in which the charge against the accused was being investigated that he is engaged by the accused for the purposes of his defence; and
  - (b) has not informed that procurator fiscal that he has been dismissed by, or has withdrawn from acting for, the accused.
- (6E) It is the duty of a solicitor who has, before service of an indictment, notified a procurator fiscal that he is engaged by the accused for the purposes of his defence to inform that procurator fiscal in writing forthwith if he is dismissed by, or withdraws from acting for, the accused.]
- (7) [F40Subject to subsection (4)(b) above,]service of the indictment, lists of witnesses and productions, and any notice or intimation to the accused, and the citation of witnesses, whether for precognition or trial, may be effected by any officer of law.
- (8) F41 .....
- (9) The citation of witnesses may be effected by any officer of law duly authorised; and in any proceedings, the evidence on oath of the officer shall, subject to subsection (10) below, be sufficient evidence of the execution of the citation.
- (10) F42 .....
- (11) No objection to the competency of the officer who served the indictment [F43, or who executed a citation under subsection (4)(b) above,] to give evidence in respect of such service [F44or execution] shall be upheld on the ground that his name is not included in the list of witnesses served on the accused.
- (12) Any deletion or correction made before service on the record or service copy of an indictment shall be sufficiently authenticated by the initials of the person who has signed, or could by law have signed, the indictment.
- (13) Any deletion or correction made on a service copy of an indictment, or on any notice of citation, postponement, adjournment or other notice F45 . . . served on an accused shall be sufficiently authenticated by the initials of any procurator fiscal or of the person serving the same.
- (14) Any deletion or correction made on any execution of citation or notice [F46or] other document [F47so] served shall be sufficiently authenticated by the initials of the person serving the same.

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[<sup>F48</sup>(15) In subsection (6A) above, “commissioner proceedings” means proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b) of this Act.]

#### Textual Amendments

- F17** S. 66(1) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 7(2)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F18** S. 66(4)-(4B) substituted (27.6.2003) for s. 66(4) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **ss. 61(1)(a)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F19** Words in s. 66(4)(a) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 25**, 27(1), **Sch. para. 15(a)(i)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F20** Words in s. 66(4)(b) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 7(3)(a)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F21** Words in s. 66(4)(b) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 7(3)(b)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F22** Words in s. 66(4)(b) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 25**, 27(1), **Sch. para. 15(a)(ii)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F23** S. 66(4ZA) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 7(4)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F24** S. 66(4C) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 25**, 27(1), **Sch. para. 15(b)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F25** Words in s. 66 (6 ) substituted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **ss. 61(1)(b)(i)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F26** Words in s. 66(6)(a) renumbered as s. 66(6)(a)(i) (1.2.2005) by virtue of [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 1(1)(a)(i)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F27** S. 66(6)(a)(ii) and word inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 1(1)(a)(ii)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F28** S. 66(6)(b) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 1(1)(b)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F29** S. 66(6A)(6B) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 3, **Sch. para. 4**; S.S.I. 2002/443, **art. 3**
- F30** S. 66(6A)(a)(zi) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 25**, 27(1), **Sch. para. 15(c)(i)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F31** Words in s. 66(6A)(a)(i) inserted (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 35(1)(a)(i)**, 84; S.S.I. 2007/250, **art. 3(a)**
- F32** Words in s. 66(6A)(a)(i) added (25.11.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **ss. 85**, 89, **Sch. 4 para. 3(2)**; S.S.I. 2003/475, **art. 2**, Sch.
- F33** Words in s. 66(6A)(a)(iii) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 25**, 27(1), **Sch. para. 15(c)(ii)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F34** Words in s. 66(6A)(a)(iii) inserted (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 35(1)(a)(ii)**, 84; S.S.I. 2007/250, **art. 3(a)**
- F35** S. 66(6A)(b) and preceding word repealed (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 1(2)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F36** S. 66(6AA) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 10(5)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F37** Words in s. 66(6B) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 25**, 27(1), **Sch. para. 15(d)(i)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F38** Words in s. 66(6B) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 25**, 27(1), **Sch. para. 15(d)(ii)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)



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- F39** S. 66(6C)-(6E) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 7(5), 27(1); S.S.I. 2004/405, art. 2, Sch. 1 (subject to arts. 3-5)
- F40** Words in s. 66 (7 ) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 61(1)(c), 89; S.S.I. 2003/288, art. 2, Sch.
- F41** S. 66(8) repealed (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 7(6), 27(1); S.S.I. 2004/405, art. 2, Sch. 1 (subject to arts. 3-5)
- F42** S. 66(10) repealed (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 15(e); S.S.I. 2004/405, art. 2, Sch. 1 (subject to arts. 3-5)
- F43** Words in s. 66(11) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 61(1)(e)(i), 89; S.S.I. 2003/288, art. 2, Sch.
- F44** Words in s. 66(11) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 61(1)(e)(ii), 89; S.S.I. 2003/288, art. 2, Sch.
- F45** Words in s. 66(13) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 61(1)(f), 89; S.S.I. 2003/288, art. 2, Sch.
- F46** Words in s. 66(14) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 61(1)(g)(i), 89; S.S.I. 2003/288, art. 2, Sch.
- F47** Words in s. 66(14) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 61(1)(g)(ii), 89; S.S.I. 2003/288, art. 2, Sch.
- F48** S. 66(15) added (23.4.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 35(1)(b), 84; S.S.I. 2007/250, art. 3(a)

## 67 Witnesses.

- (1) The list of witnesses shall consist of the names of the witnesses together with an address at which they can be contacted for the purposes of precognition.
- (2) It shall not be necessary to include in the list of witnesses the names of any witnesses to the declaration of the accused or the names of any witnesses to prove that an extract conviction applies to the accused, but witnesses may be examined in regard to these matters without previous notice.
- (3) Any objection in respect of misnomer or misdescription of—
  - (a) any person named in the indictment; or
  - (b) any witness in the list of witnesses,

shall be intimated in writing to the court before which the trial is to take place, to the prosecutor and to any other accused, where the case is to be tried in the sheriff court, at or before the first diet and, where the case is to be tried in the High Court, not less than [<sup>F49</sup>seven] clear days before the [<sup>F50</sup>preliminary hearing]; and, except on cause shown, no such objection shall be admitted <sup>F51</sup>. . . unless so intimated.

- (4) Where such intimation has been given or cause is shown and the court is satisfied that the accused making the objection has not been supplied with sufficient information to enable him to identify the person named in the indictment or to find such witness in sufficient time to precognosce him before the trial, the court may grant such remedy by postponement, adjournment or otherwise as appears to it to be appropriate.

[<sup>F52</sup>(4A) The prosecutor shall have a duty to cite a witness included in the list only if—

- (a) it has been ascertained under—
  - (i) in the case of proceedings in the High Court, section 72(6)(d); or
  - (ii) in the case of proceedings in the sheriff court, section 71(1C)(a), of this Act that the witness is required by the prosecutor or the accused to attend the trial; or

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- (b) where, in the case of proceedings in the High Court, the preliminary hearing has been dispensed with under subsection (1) of section 72B of this Act, the witness was identified in the application under that subsection as being required by the prosecutor or the accused to attend the trial.]

(5) Without prejudice to—

- (a) any enactment or rule of law permitting the prosecutor to examine any witness not included in the list of witnesses; or  
(b) subsection (6) below,

in any trial it shall be competent with the leave of the court for the prosecutor to examine any witness or to put in evidence any production not included in the lists lodged by him, provided that written notice, containing in the case of a witness his name and address as mentioned in subsection (1) above, has been given to the accused [F53 by the relevant time.]

[F54(5A) In subsection (5) above, “the relevant time” means—

- (a) where the case is to be tried in the High Court—  
(i) not less than seven clear days before the preliminary hearing; or  
(ii) such later time, before the jury is sworn to try the case, as the court may, on cause shown, allow;  
(b) where the case is to be tried in the sheriff court,]

not less than two clear days before the day on which the jury is sworn to try the case.

- (6) It shall be competent for the prosecutor to examine any witness or put in evidence any production included in any list or notice lodged by the accused, and it shall be competent for an accused to examine any witness or put in evidence any production included in any list or notice lodged by the prosecutor or by a co-accused.

#### Textual Amendments

- F49** Word in s. 67(3) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 16\(a\)\(i\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)
- F50** Words in s. 67(3) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 16\(a\)\(ii\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)
- F51** Words in s. 67(3) repealed (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 16\(a\)\(iii\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)
- F52** S. 67(4A) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 16\(b\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)
- F53** S. 67: words, including words forming part of a new subsection (5A), expressed to be inserted in subsection (5) (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 16\(c\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)
- F54** S. 67: words, including words forming part of a new subsection (5A), expressed to be inserted in subsection (5) (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 16\(c\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)

#### 67A Failure of witness to attend for, or give evidence on, precognition.

F55

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### Textual Amendments

**F55** S. 67A repealed (4.10.2004) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 17**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

## 68 Productions.

- (1) The list of productions shall include the record, made under section 37 of this Act (incorporating any rectification authorised under section 38(1) of this Act), of proceedings at the examination of the accused.
- (2) The accused shall be entitled to see the productions according to the existing law and practice in the office of the sheriff clerk of the district in which the court of the trial diet is situated or, where the trial diet is to be in the High Court in Edinburgh, in the Justiciary Office.
- (3) Where a person who has examined a production is adduced to give evidence with regard to it and the production has been lodged [<sup>F56</sup>, where the case is to be tried in the sheriff court,] at least eight days before the trial diet [<sup>F57</sup>or, where the case is to be tried in the High Court, at least 14 days before the preliminary hearing,] , it shall not be necessary to prove—
  - (a) that the production was received by him in the condition in which it was taken possession of by the procurator fiscal or the police and returned by him after his examination of it to the procurator fiscal or the police; or
  - (b) that the production examined by him is that taken possession of by the procurator fiscal or the police,unless the accused, [<sup>F58</sup>where the case is to be tried in the sheriff court,] at least four days before the trial diet [<sup>F59</sup>or, where the case is to be tried in the High Court, at least seven days before the preliminary hearing,] , gives in accordance with subsection (4) below written notice that he does not admit that the production was received or returned as aforesaid or, as the case may be, that it is that taken possession of as aforesaid.
- (4) The notice mentioned in subsection (3) above shall be given—
  - (a) where [<sup>F60</sup>the case is to be tried in the High Court] , to the Crown Agent; and
  - (b) where [<sup>F61</sup>the case is to be tried in the sheriff court] , to the procurator fiscal.

### Textual Amendments

**F56** Words in s. 68(3) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 18(a)(i)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

**F57** Words in s. 68(3) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 18(a)(ii)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

**F58** Words in s. 68(3) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 18(a)(iii)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

**F59** Words in s. 68(3) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 18(a)(iv)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

**F60** Words in s. 68(4)(a) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 18(b)(i)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

**F61** Words in s. 68(4)(b) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 18(b)(ii)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

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## 69 Notice of previous convictions.

- (1) No mention shall be made in the indictment of previous convictions, nor shall extracts of previous convictions be included in the list of productions annexed to the indictment.
- (2) If the prosecutor intends to place before the court any previous conviction, he shall cause to be served on the accused along with the indictment a notice in the form set out in an Act of Adjournal or as nearly as may be in such form, and any conviction specified in the notice shall be held to apply to the accused unless he gives, in accordance with subsection (3) below, written intimation objecting to such conviction on the ground that it does not apply to him or is otherwise inadmissible.
- (3) Intimation objecting to a conviction under subsection (2) above shall be given—
  - (a) where the accused is [<sup>F62</sup>indicted to the High Court, to the Crown Agent not less than seven clear days before the preliminary hearing;]
  - [<sup>F62</sup>(b) where the accused is indicted to the sheriff court, to the procurator fiscal at least five clear days before the first day of the sitting in which the trial diet is to be held.]
- (4) Where notice is given by the accused under section 76 of this Act of his intention to plead guilty and the prosecutor intends to place before the court any previous conviction, he shall cause to be served on the accused along with the indictment a notice in the form set out in an Act of Adjournal or as nearly as may be in such form.
- [<sup>F63</sup>(4A) A notice served under subsection (2) or (4) above shall include any details which the prosecutor proposes to provide under section 101(3A) of this Act; and subsection (3) above shall apply in relation to intimation objecting to the provision of such details, on the grounds that they do not apply to the accused or are otherwise inadmissible, as it applies in relation to intimation objecting to a conviction.]
- (5) Where the accused pleads guilty at any diet, no objection to any conviction of which notice has been served on him under this section [<sup>F64</sup>, or to the provision of such details as are, by virtue of subsection (4A) above, included in a notice so served,] shall be entertained unless he has, at least two clear days before the diet, given intimation to the procurator fiscal of the district to the court of which the accused is cited for the diet.

### Textual Amendments

- F62** S. 69(3)(b) and words substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5), ss. 25, 27(1), **Sch. para. 19**; S.S.I. 2004/405, **art. 2(1)**, Sch. 1 (subject to arts. 3-5)
- F63** S. 69(4A) inserted (19.6.2006 for certain purposes and otherwise prosp.) by [Criminal Justice \(Scotland\) Act 2003](#) (asp 7), ss. 1(2), 89, **Sch. 1 para. 2(2)(a)**; S.S.I. 2006/332, **art. 2(1)(2)**
- F64** Words in s. 69(5) inserted (19.6.2006 for certain purposes and otherwise prosp.) by [Criminal Justice \(Scotland\) Act 2003](#) (asp 7), ss. 1(2), 89, **Sch. 1 para. 2(2)(b)**; S.S.I. 2006/332, **art. 2(1)(2)**

## 70 Proceedings against bodies corporate.

- (1) This section applies to proceedings on indictment against a body corporate.
- (2) The indictment may be served by delivery of a copy of the indictment together with notice to appear at the registered office or, if there is no registered office or the

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registered office is not in the United Kingdom, at the principal place of business in the United Kingdom of the body corporate.

- (3) Where a letter containing a copy of the indictment has been sent by registered post or by the recorded delivery service to the registered office or principal place of business of the body corporate, an acknowledgement or certificate of the delivery of the letter issued by the [<sup>F65</sup>postal operator] shall be sufficient evidence of the delivery of the letter at the registered office or place of business on the day specified in such acknowledgement or certificate.
- (4) A body corporate may, for the purpose of—
  - (a) stating objections to the competency or relevancy of the indictment or proceedings; or
  - (b) tendering a plea of guilty or not guilty; or
  - (c) making a statement in mitigation of sentence,appear by a representative of the body corporate.
- (5) Where at the trial diet the body corporate does not appear as mentioned in subsection (4) above, or by counsel or a solicitor, the court [<sup>F66</sup> may—
  - (a) on the motion of the prosecutor; and
  - (b) if satisfied as to the matters specified in subsection (5A) below,proceed with the trial] and dispose of the case in the absence of the body corporate.
- [<sup>F67</sup>(5A) The matters referred to in subsection (5)(b) above are—
  - (a) that the body corporate was cited in accordance with section 66 of this Act as read with subsection (2) above; and
  - (b) that it is in the interests of justice to proceed as mentioned in subsection (5) above.]
  - (6) Where a body corporate is sentenced to a fine, the fine may be recovered in like manner in all respects as if a copy of the sentence certified by the clerk of the court were an extract decree of the Court of Session for the payment of the amount of the fine by the body corporate to the Queen’s and Lord Treasurer’s Remembrancer.
  - (7) Nothing in section 77 of this Act shall require a plea tendered by or on behalf of a body corporate to be signed.
  - (8) In this section, “representative”, in relation to a body corporate, means an officer or employee of the body corporate duly appointed by it for the purpose of the proceedings; and a statement in writing purporting to be signed by the managing director of, or by any person having or being one of the persons having the management of the affairs of the body corporate, to the effect that the person named in the statement has been appointed the representative of the body corporate for the purpose of any proceedings to which this section applies shall be sufficient evidence of such appointment [<sup>F68</sup>; and “officer” and “any person having or being one of the persons having the management of the affairs of the body corporate”, in relation to a limited liability partnership, means a member of the limited liability partnership].

#### Textual Amendments

**F65** Words in s. 70(3) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 104(2)** (subject to art. 1(3))



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- F66** Words in s. 70(5) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 10(6)(a)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F67** S. 70(5A) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 10(6)(b)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F68** Words in s. 70(8) inserted (6.4.2001) by S.S.I. 2001/128, **reg. 5**, **Sch. 4 para. 1**

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

- C4** S. 70 extended (6.1.1997) by S.I. 1996/2827, **reg. 70(4)**
- C5** S. 70 applied (18.6.2001) by 2000 c. 8, **s. 403(4)(b)**; S.I. 2001/1820, **art. 2**, **Sch. 1**  
S. 70 applied (with modifications) (16.2.2001) by 2000 c. 41, **s. 153(4)**; S.I. 2001/222, **art. 2**, **Sch. 1 Pt. 1**  
S. 70 applied (31.5.2002) by Anti-terrorism, Crime and Security Act 2001 (c. 24), **s. 69(4)(b)**; S.I. 2002/1279, **art. 2**  
S. 70 applied (1.4.2005) by Gangmasters (Licensing) Act 2004 (c. 11), **ss. {21(4)(b)}, {22(6)(b)}**, 29; S.I. 2005/447, **art. 1**
- C6** S. 70 applied (26.7.2007 for certain purposes and 26.7.2008 otherwise) by The Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2007 (S.I. 2007/1895), **regs. 1**, **6(4)**  
S. 70 applied (15.12.2007) by The Money Laundering Regulations 2007 (S.I. 2007/2157), **reg. 47(8)(b)**  
S. 70 applied (15.12.2007) by The Transfer of Funds (Information on the Payer) Regulations 2007 (S.I. 2007/3298), **reg. 16(8)(b)**  
S. 70 applied (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 31(6)(b)(ii)**, 94; S.I. 2008/755, **art. 15(1)** (subject to paras. (2)(3))  
S. 70 applied (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 32(5)(b)(ii)**, 94; S.I. 2008/755, **art. 15(1)** (subject to paras. (2)(3))
- C7** S. 70 applied (20.1.2007, 6.4.2007, 1.10.2007, otherwise prosp.) by Companies Act 2006 (c. 46), **ss. 1130(2)(b)(ii)**, 1300 (with savings in s. 1133); S.I. 2006/3428, **art. 3(2)** (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5); S.I. 2007/1093, **art. 2(2)(c)** (with arts. 4, 11); S.I. 2007/2194, **art. 2(1)(l)(3)(h)** (with art. 12)
- C8** S. 70 applied (20.1.2007 for certain purposes and 6.4.2008 otherwise) by Companies Act 2006 (c. 46), **ss. 1257(5)**, 1300; S.I. 2006/3428, **art. 3(3)** (subject to arts. 5, 6, Sch. 1 (which Sch. 1 was revoked (1.10.2009) by S.I. 2008/2860, art. 6 subject to savings in Sch. 2)); S.I. 2007/3495, **art. 3(1)(u)** (with arts. 7, 12, Sch. 4 paras. 37-42)
- C9** S. 70 applied (5.2.2008) by The Transport Act 1968 (c. 73), **s. 102B(4)(b)** (as inserted by The Passenger and Goods Vehicles (Recording Equipment) (Downloading and Retention of Data) Regulations 2008 (S.I. 2008/198), **reg. 3**)

VALID FROM 06/06/2011

#### <sup>F69</sup>70A Defence statements

- (1) This section applies where an indictment is served on an accused.
- (2) The accused must lodge a defence statement at least 14 days before the first diet.
- (3) The accused must lodge a defence statement at least 14 days before the preliminary hearing.
- (4) At least 7 days before the trial diet the accused must—

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- (a) where there has been no material change in circumstances in relation to the accused's defence since the last defence statement was lodged, lodge a statement stating that fact,
  - (b) where there has been a material change in circumstances in relation to the accused's defence since the last defence statement was lodged, lodge a defence statement.
- (5) If after lodging a statement under subsection (2), (3) or (4) there is a material change in circumstances in relation to the accused's defence, the accused must lodge a defence statement.
- (6) Where subsection (5) requires a defence statement to be lodged, it must be lodged before the trial diet begins unless on cause shown the court allows it to be lodged during the trial diet.
- (7) The accused may lodge a defence statement—
- (a) at any time before the trial diet, or
  - (b) during the trial diet if the court on cause shown allows it.
- (8) As soon as practicable after lodging a defence statement or a statement under subsection (4)(a), the accused must send a copy of the statement to the prosecutor and any co-accused.
- (9) In this section, “defence statement” means a statement setting out—
- (a) the nature of the accused's defence, including any particular defences on which the accused intends to rely,
  - (b) any matters of fact on which the accused takes issue with the prosecution and the reason for doing so,
  - (c) particulars of the matters of fact on which the accused intends to rely for the purposes of the accused's defence,
  - (d) any point of law which the accused wishes to take and any authority on which the accused intends to rely for that purpose,
  - (e) by reference to the accused's defence, the nature of any information that the accused requires the prosecutor to disclose, and
  - (f) the reasons why the accused considers that disclosure by the prosecutor of any such information is necessary.]

#### Textual Amendments

**F69** S. 70A inserted (prosp.) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 124(3), 206(1)** (with [s. 124\(1\)](#))

### *Pre-trial proceedings*

#### **71 First diet.**

[<sup>F70</sup>(A1) At a first diet [<sup>F71</sup>in proceedings to which subsection (B1) below applies] , the court shall, <sup>F72</sup> . . . ascertain whether [<sup>F73</sup>the accused] has engaged a solicitor for the purposes of his defence at the trial.]

[<sup>F74</sup>(B1) This subsection applies to proceedings—

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- (a) in which the accused is charged with a sexual offence to which section 288C of this Act applies,
  - (b) to which section 288E of this Act applies, or
  - (c) in which an order under section 288F(2) of this Act has been made before the trial diet.]
- (1) At a first diet the court shall, so far as is reasonably practicable, ascertain whether the case is likely to proceed to trial on the date assigned as the trial diet and, in particular—
- (a) the state of preparation of the prosecutor and of the accused with respect to their cases; and
  - (b) the extent to which the prosecutor and the accused have complied with the duty under section 257(1) of this Act.
- [<sup>F75</sup>(1A) At a first diet, 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 the 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.]
- [<sup>F76</sup>(1C) At a first diet, the court—
- (a) shall ascertain which of the witnesses included in the list of witnesses are required by the prosecutor or the accused to attend the trial; and
  - (b) shall, where the accused has been admitted to bail, review the conditions imposed on his bail and may—
    - (i) after giving the parties an opportunity to be heard; and
    - (ii) if it considers it appropriate to do so, fix bail on different conditions.]
- (2) In addition to the matters mentioned in subsection (1) [<sup>F77</sup>, (1A) and (1C)] above the court shall, at a first diet, consider any [<sup>F78</sup>preliminary plea or preliminary issue (within the meanings given to those terms in section 79(2) of this Act)] of which a party has, not less than two clear days before the first diet, given notice to the court and to the other parties.
- [<sup>F79</sup>(2XA) At a first diet the court shall also dispose of any child witness notice under section 271A(2) or vulnerable witness application under section 271C(2) appointed to be disposed of at that diet.]
- [<sup>F80</sup>(2YA) At a first diet, the court shall also ascertain whether there is any objection to the admissibility of any evidence which any party wishes to raise despite not having given the notice referred to in subsection (2) above, and—
- (a) if so, decide whether to grant leave under section 79(1) of this Act for the objection to be raised; and
  - (b) if leave is granted, dispose of the objection unless it considers it inappropriate to do so at the first diet.



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(2ZA) Where the court, having granted leave for the objection to be raised, decides not to dispose of it at the first diet, the court may—

- (a) appoint a further diet to be held before the trial diet for the purpose of disposing of the objection; or
- (b) appoint the objection to be disposed of at the trial diet.]

[<sup>F81</sup>(2A) At a first diet the court may consider an application for the purposes of subsection (1) of section 275 of this Act.]

(3) At a first 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) [<sup>F82</sup>, (1A)] [<sup>F83</sup>, (1C)] [<sup>F84</sup>, (2) or (2YA)] above [<sup>F85</sup> or which is relevant to an application for the purposes of subsection (1) of the said section 275] .

(4) The accused shall attend a first diet of which he has been given notice and the court may, if he fails to do so, grant a warrant to apprehend him.

(5) A first diet may proceed notwithstanding the absence of the accused.

[<sup>F86</sup>(5A) Where, however—

[<sup>F87</sup>(a) the proceedings in which the first diet is being held are proceedings to which subsection (B1) above applies;]

(b) the court has not ascertained (whether at that diet or earlier) that he has engaged a solicitor for the purposes of his defence at the trial, a first diet may not proceed in his absence; and, in such a case, the court shall adjourn the diet and ordain the accused then to attend.]

(6) The accused shall, at the first diet, be required to state how he pleads to the indictment, and section 77 of this Act shall apply where he tenders a plea of guilty.

(7) Where at a first diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—

- (a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and
- (b) may fix a further first diet.

(8) <sup>F88</sup> .....

(8A) <sup>F88</sup> .....

(9) In this section “the court” means the sheriff court.

#### Textual Amendments

**F70** S. 71(A1) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 3, [Sch. para. 5\(a\)](#); S.S.I. 2002/443, [art. 3](#)

**F71** Words in s. 71(A1) inserted (1.4.2005 for certain purposes and 1.4.2006 for further certain purposes and otherwise prosp.) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), [ss. 7\(1\)\(a\)\(i\)](#), 25; S.S.I. 2005/168, [art. 2](#), [Sch.](#) (with [art. 4](#)); S.S.I. 2006/59, [art. 2](#), [Sch.](#) (with [art. 4\(1\)](#))

**F72** Words in s. 71(A1) repealed (1.4.2005 for certain purposes and 1.4.2006 for further certain purposes and otherwise prosp.) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), [ss. 7\(1\)\(a\)\(ii\)](#), 25; S.S.I. 2005/168, [art. 2](#), [Sch.](#) (with [art. 4](#)); S.S.I. 2006/59, [art. 2](#), [Sch.](#) (with [art. 4\(1\)](#))

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- F73** Word in s. 71(A1) substituted (1.4.2005 for certain purposes and 1.4.2006 for further certain purposes and otherwise prosp.) by **Vulnerable Witnesses (Scotland) Act 2004** (asp 3), **ss. 7(1)(a)(iii)**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1))
- F74** S. 71(B1) inserted (1.4.2005 for certain purposes and 1.4.2006 for further certain purposes and otherwise prosp.) by **Vulnerable Witnesses (Scotland) Act 2004** (asp 3), **ss. 7(1)(b)**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1))
- F75** S. 71(1A)(1B) inserted (1.4.2005 and 1.4.2006 for certain purposes, otherwise 1.4.2008) by **Vulnerable Witnesses (Scotland) Act 2004** (asp 3), **ss. 2(1)(a)**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2008/57, **art. 2** (with art. 3)
- F76** S. 71(1C) inserted after (1B) (1.2.2005) by **Criminal Procedure (Amendment) (Scotland) Act 2004** (asp 5), **ss. 19(2)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F77** Words in s. 71(2) substituted (1.2.2005) by **Criminal Procedure (Amendment) (Scotland) Act 2004** (asp 5), **ss. 19(3)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F78** Words in s. 71(2) substituted (1.2.2005) by **Criminal Procedure (Amendment) (Scotland) Act 2004** (asp 5), **ss. 25, 27(1)**, **Sch. para. 20(a)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F79** S. 71(2XA) inserted (1.2.2005 for certain purposes in accordance with art. 1(3) of the amending S.S.I.) by **The Criminal Procedure (Amendment) (Scotland) Act 2004 (Incidental, Supplemental and Consequential Provisions) Order 2005** (S.S.I. 2005/40), **art. 4(3)**; S.S.I. 2004/405, art. 2, Schs. 1, 2
- F80** S. 71(2YA)(2ZA) inserted (1.2.2005) by **Criminal Procedure (Amendment) (Scotland) Act 2004** (asp 5), **ss. 14(1)(a)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F81** S. 71(2A) inserted (1.11.2002) by **Sexual Offences (Procedure and Evidence) (Scotland) Act 2002** (asp 9), **s. 8(2)(a)**; S.S.I. 2002/443, **art. 3** (with art. 4(5))
- F82** Words in s. 71(3) inserted (1.4.2005 and 1.4.2006 for certain purposes and otherwise 1.4.2008) by **Vulnerable Witnesses (Scotland) Act 2004** (asp 3), **ss. 2(1)(c)**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2008/57, **art. 2** (with art. 3)
- F83** Words in s. 71(3) inserted (1.2.2005) by **Criminal Procedure (Amendment) (Scotland) Act 2004** (asp 5), **ss. 19(4)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F84** Words in s. 71(3) substituted (1.2.2005) by **Criminal Procedure (Amendment) (Scotland) Act 2004** (asp 5), **ss. 14(1)(b)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F85** Words in s. 71(3) inserted (1.11.2002) by **Sexual Offences (Procedure and Evidence) (Scotland) Act 2002** (asp 9), **s. 8(2)(b)**; S.S.I. 2002/443, **art. 3** (with art. 4(5))
- F86** S. 71(5A) inserted (1.11.2002) by **Sexual Offences (Procedure and Evidence) (Scotland) Act 2002** (asp 9), s. 3, **Sch. para. 5(b)**; S.S.I. 2002/443, **art. 3**
- F87** S. 71(5A)(a) substituted (1.4.2005 for certain purposes and 1.4.2006 for further certain purposes and otherwise prosp.) by **Vulnerable Witnesses (Scotland) Act 2004** (asp 3), **ss. 7(1)(c)**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1))
- F88** S. 71(8)(8A) repealed (1.2.2005) by **Criminal Procedure (Amendment) (Scotland) Act 2004** (asp 5), **ss. 25, 27(1)**, **Sch. para. 20(b)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

[<sup>F89</sup>**71A Further pre-trial diet: dismissal or withdrawal of solicitor representing accused in case of sexual offence**

<sup>F90</sup> .....

**Textual Amendments**

- F89** S. 71A inserted (1.11.2002) by **Sexual Offences (Procedure and Evidence) (Scotland) Act 2002** (asp 9), s. 3, **Sch. para. 6**; S.S.I. 2002/443, **art. 3**
- F90** S. 71A repealed (4.12.2004) by **Criminal Procedure (Amendment) (Scotland) Act 2004** (asp 5), **ss. 25, 27(1)**, **Sch. para. 21**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

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## [<sup>F91</sup>72 Preliminary hearing: procedure up to appointment of trial diet

- (1) A preliminary hearing shall be conducted in accordance with this section and section 72A.
- (2) The court shall—
  - (a) where the accused is charged with an offence to which section 288C of this Act applies; or
  - (b) in any case—
    - (i) in respect of which section 288E of this Act applies; or
    - (ii) in which an order has been made under section 288F(2) of this Act, before taking any further step under this section, ascertain whether the accused has engaged a solicitor for the purposes of the conduct of his case at or for the purposes of the preliminary hearing.
- (3) After complying with subsection (2) above, the court shall dispose of any preliminary pleas (within the meaning of section 79(2)(a) of this Act) of which a party has given notice not less than 7 clear days before the preliminary hearing to the court and to the other parties.
- (4) After disposing of any preliminary pleas under subsection (3) above, the court shall require the accused to state how he pleads to the indictment.
- (5) If the accused tenders a plea of guilty, section 77 of this Act shall apply.
- (6) After the accused has stated how he pleads to the indictment, the court shall, unless a plea of guilty is tendered and accepted—
  - (a) in any case—
    - (i) where the accused is charged with an offence to which section 288C of this Act applies;
    - (ii) in respect of which section 288E of this Act applies; or
    - (iii) in which an order has been made under section 288F(2) of this Act, ascertain whether the accused has engaged a solicitor for the purposes of his defence at the trial;
  - (b) unless it considers it inappropriate to do so at the preliminary hearing, dispose of—
    - (i) any preliminary issues (within the meaning of section 79(2)(b) of this Act) of which a party has given notice not less than 7 clear days before the preliminary hearing to the court and to the other parties;
    - (ii) any child witness notice under section 271A(2) or vulnerable witness application under section 271C(2) appointed to be disposed of at the preliminary hearing;
    - (iii) subject to subsection (8) below, any application under section 275(1) or 288F(2) of this Act made before the preliminary hearing; and
    - (iv) any other matter which, in the opinion of the court, could be disposed of with advantage before the trial;
  - (c) ascertain whether there is any objection to the admissibility of any evidence which any party wishes to raise despite not having given the notice referred to in paragraph (b)(i) above, and—
    - (i) if so, decide whether to grant leave under section 79(1) of this Act for the objection to be raised; and

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- (ii) if leave is granted, dispose of the objection unless it considers it inappropriate to do so at the preliminary hearing;
  - (d) ascertain which of the witnesses included in the list of witnesses are required by the prosecutor or the accused to attend the trial;
  - (e) ascertain whether subsection (7) 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
  - (f) ascertain, so far as is reasonably practicable—
    - (i) the state of preparation of the prosecutor and the accused with respect to their cases; and
    - (ii) the extent to which the prosecutor and the accused have complied with the duty under section 257(1) of this Act.
- (7) 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.
- (8) Where any application or notice such as is mentioned in subsection (6)(b)(iii) above is required by the provision under which it is made or lodged, or by any other provision of this Act, to be made or lodged by a certain time, the court—
- (a) shall not be required under that subsection to dispose of it unless it has been made or lodged by that time; but
  - (b) shall have power to dispose of it to the extent that the provision under which it was made, or any other provision of this Act, allows it to be disposed of notwithstanding that it was not made or lodged in time.
- (9) Where the court decides not to dispose of any preliminary issue, application, notice, objection or other matter referred to in subsection (6)(b) or (c) above at the preliminary hearing, it may—
- (a) appoint a further diet, to be held before the trial diet appointed under section 72A of this Act, for the purpose of disposing of the issue, application, notice, objection or matter; or
  - (b) appoint the issue, application, notice, objection or other matter to be disposed of at the trial diet.]

#### Textual Amendments

**F91** Ss. 72-72D substituted for ss. 72-73A (1.2.2005, 1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 1(3), 27(1)**; [S.S.I. 2004/405](#), **art. 2, Sch. 1** (subject to arts. 3-5); [S.S.I. 2005/168](#), **art. 2, Sch.** (with art. 4); [S.S.I. 2006/59](#), **art. 2, Sch.** (with art. 4(1)); [S.S.I. 2007/101](#), **art. 2, Sch.** (with art. 4); [S.S.I. 2007/329](#), **art. 2, Sch.** (with art. 4)); [S.S.I. 2008/57](#), **art. 2** (with art. 3)

#### [<sup>F92</sup>[<sup>F93</sup>72A] Preliminary hearing: appointment of trial diet

- (1) [<sup>F94</sup>In proceedings to which this section] applies, the court shall, at the preliminary hearing—
- (a) after complying with that subsection;

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- (b) having regard to earlier proceedings at the preliminary hearing; and
  - (c) subject to subsections (3) to (7) below,
- appoint a trial diet.

[<sup>F95</sup>(1A) This section applies to proceedings in the High Court—

- (a) in which the accused is charged with a sexual offence to which section 288C of this Act applies,
  - (b) to which section 288E of this Act applies, or
  - (c) in which an order under section 288F(2) of this Act has been made before the trial diet.]
- (2) In appointing a trial diet under subsection (1) above, the court may, if satisfied that it is appropriate to do so, indicate that the diet is to be a floating diet for the purposes of section 83A of this Act.
- (3) In any case in which the 12 month period applies (whether or not the 140 day period also applies in the case)—
- (a) if the court considers that the case would be likely to be ready to proceed to trial within that period, it shall, subject to subsections (5) to (7) below, appoint a trial diet for a date within that period; or
  - (b) if the court considers that the case would not be likely to be so ready, it shall give the prosecutor an opportunity to make an application to the court under section 65(3) of this Act for an extension of the 12 month period.
- (4) Where paragraph (b) of subsection (3) above applies—
- (a) if such an application as is mentioned in that paragraph is made and granted, the court shall, subject to subsections (5) to (7) below, appoint a trial diet for a date within the 12 month period as extended; or
  - (b) if no such application is made or if one is made but is refused by the court—
    - (i) the court may desert the preliminary hearing *simpliciter* or *pro loco et tempore*; and
    - (ii) where the accused is committed until liberated in due course of law, he shall be liberated forthwith.
- (5) Subsection (6) below applies in any case in which—
- (a) the 140 day period as well as the 12 month period applies; and
  - (b) the court is required, by virtue of subsection (3)(a) or (4)(a) above, to appoint a trial diet within the 12 month period.
- (6) In such a case—
- (a) if the court considers that the case would be likely to be ready to proceed to trial within the 140 day period, it shall appoint a trial diet for a date within that period as well as within the 12 month period; or
  - (b) if the court considers that the case would not be likely to be so ready, it shall give the prosecutor an opportunity to make an application under section 65(5) of this Act for an extension of the 140 day period.
- (7) Where paragraph (b) of subsection (6) above applies—
- (a) if such an application as is mentioned in that paragraph is made and granted, the court shall appoint a trial diet for a date within the 140 day period as extended as well as within the 12 month period;
  - (b) if no such application is made or if one is made but is refused by the court—

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- (i) the court shall proceed under subsection (3)(a) or, as the case may be, (4)(a) above to appoint a trial diet for a date within the 12 month period; and
  - (ii) the accused shall then be entitled to be admitted to bail.
- (8) Where an accused is, by virtue of subsection (7)(b)(ii) above, entitled to be admitted to bail, the court shall, before admitting him to bail, give the prosecutor an opportunity to be heard.
- (9) On appointing a trial diet under this section in a case where the accused has been admitted to bail (otherwise than by virtue of subsection (7)(b)(ii) above), the court, after giving the parties an opportunity to be heard—
- (a) shall review the conditions imposed on his bail; and
  - (b) having done so, may, if it considers it appropriate to do so, fix bail on different conditions.
- (10) In this section—
- “the 12 month period” means the period specified in subsection (1)(b) of section 65 of this Act and, in any case in which that period has been extended under subsection (3) of that section, includes that period as so extended; and
- “the 140 day period” means the period specified in subsection (4)(aa)(ii) of that section and, in any case in which that period has been extended under subsection (5) of that section, includes that period as so extended.]]

#### Textual Amendments

- F92** S. 72A inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 3, [Sch. para. 7](#); S.S.I. 2002/443, [art. 3](#)
- F93** Ss. 72-72D substituted for ss. 72-73A (1.2.2005, 1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [ss. 1\(3\)](#), 27(1); S.S.I. 2004/405, [art. 2](#), [Sch. 1](#) (subject to arts. 3-5); S.S.I. 2005/168, [art. 2](#), [Sch.](#) (with art. 4); S.S.I. 2006/59, [art. 2](#), [Sch.](#) (with art. 4(1)); S.S.I. 2007/101, [art. 2](#), [Sch.](#) (with art. 4); S.S.I. 2007/329, [art. 2](#), [Sch.](#) (with art. 4); S.S.I. 2008/57, [art. 2](#) (with art. 3)
- F94** Words in [s. 72A\(1\)](#) substituted (1.4.2005 for certain purposes and 1.4.2006 for further certain purposes and otherwise prosp.) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), [ss. 7\(3\)\(a\)](#), 25; S.S.I. 2005/168, [art. 2](#), [Sch.](#) (with art. 4); S.S.I. 2006/59, [art. 2](#), [Sch.](#) (with art. 4(1))
- F95** [S. 72A\(1A\)](#) inserted (1.4.2005 for certain purposes and 1.4.2006 for further certain purposes and otherwise prosp.) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), [ss. 7\(3\)\(b\)](#), 25; S.S.I. 2005/168, [art. 2](#), [Sch.](#) (with art. 4); S.S.I. 2006/59, [art. 2](#), [Sch.](#) (with art. 4(1))

#### [<sup>F96</sup>72B Power to dispense with preliminary hearing

- (1) The court may, on an application made to it jointly by the parties, dispense with a preliminary hearing and appoint a trial diet if the court is satisfied on the basis of the application that—
- (a) the state of preparation of the prosecutor and the accused with respect to their cases is such that the case is likely to be ready to proceed to trial on the date to be appointed for the trial diet;
  - (b) there are no preliminary pleas, preliminary issues or other matters which require to be, or could with advantage be, disposed of before the trial; and
  - (c) there are no persons to whom section 72(7) of this Act applies.

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- (2) An application under subsection (1) above shall identify which (if any) of the witnesses included in the list of witnesses are required by the prosecutor or the accused to attend the trial.
- (3) Where a trial diet is to be appointed under subsection (1) above, it shall be appointed in accordance with such procedure as may be prescribed by Act of Adjournal.
- (4) Where a trial diet is appointed under subsection (1) above, the accused shall appear at the diet and answer the indictment.
- (5) The fact that a preliminary hearing in any case has been dispensed with under subsection (1) above shall not affect the calculation in that case of any time limit for the giving of any notice or the doing of any other thing under this Act, being a time limit fixed by reference to the preliminary hearing.
- (6) Accordingly, any such time limit shall have effect in any such case as if it were fixed by reference to the date on which the preliminary hearing would have been held if it had not been dispensed with.

#### Textual Amendments

**F96** Ss. 72-72D substituted for ss. 72-73A (1.2.2005, 1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [ss. 1\(3\)](#), 27(1); [S.S.I. 2004/405](#), [art. 2](#), [Sch. 1](#) (subject to arts. 3-5); [S.S.I. 2005/168](#), [art. 2](#), [Sch.](#) (with [art. 4](#)); [S.S.I. 2006/59](#), [art. 2](#), [Sch.](#) (with [art. 4\(1\)](#)); [S.S.I. 2007/101](#), [art. 2](#), [Sch.](#) (with [art. 4](#)); [S.S.I. 2007/329](#), [art. 2](#), [Sch.](#) (with [art. 4](#)); [S.S.I. 2008/57](#), [art. 2](#) (with [art. 3](#))

## 72C Procedure where preliminary hearing does not proceed

- (1) The prosecutor shall not raise a fresh libel in any case in which the court has deserted a preliminary hearing *simpliciter* unless the court's decision has been reversed on appeal.
- (2) Where a preliminary hearing is deserted *pro loco et tempore*, the court may appoint a further preliminary hearing for a later date and the accused shall appear and answer the indictment at that hearing.
- (3) Subsection (4) below applies where, at a preliminary hearing—
  - (a) the hearing has been deserted *pro loco et tempore* for any reason and no further preliminary hearing has been appointed under subsection (2) above; or
  - (b) the indictment is for any reason not proceeded with and the hearing has not been adjourned or postponed.
- (4) Where this subsection applies, the prosecutor may, at any time within the period of two months after the relevant date, give notice to the accused on another copy of the indictment to appear and answer the indictment—
  - (a) at a further preliminary hearing in the High Court not less than seven clear days after the date of service of the notice; or
  - (b) at—
    - (i) a first diet not less than 15 clear days after the service of the notice and not less than 10 clear days before the trial diet; and
    - (ii) a trial diet not less than 29 clear days after the service of the notice,



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in the sheriff court where the charge is one that can lawfully be tried in that court.

- (5) Where notice is given to the accused under subsection (4)(b) above, then for the purposes of section 65(4) of this Act—
  - (a) the giving of the notice shall be taken to be service of an indictment in respect of the sheriff court; and
  - (b) the previous service of the indictment in respect of the High Court shall be disregarded.
- (6) In subsection (4) above, “the relevant date” means—
  - (a) where paragraph (a) of subsection (3) above applies, the date on which the diet was deserted as mentioned in that paragraph; or
  - (b) where paragraph (b) of that subsection applies, the date of the preliminary hearing referred to in that paragraph.
- (7) A notice referred to in subsection (4) above shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form.

#### Textual Amendments

**F96** Ss. 72-72D substituted for ss. 72-73A (1.2.2005, 1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 1(3)**, 27(1); [S.S.I. 2004/405](#), **art. 2**, **Sch. 1** (subject to arts. 3-5); [S.S.I. 2005/168](#), **art. 2**, **Sch.** (with art. 4); [S.S.I. 2006/59](#), **art. 2**, **Sch.** (with art. 4(1)); [S.S.I. 2007/101](#), **art. 2**, **Sch.** (with art. 4); [S.S.I. 2007/329](#), **art. 2**, **Sch.** (with art. 4)); [S.S.I. 2008/57](#), **art. 2** (with art. 3)

#### 72D Preliminary hearing: further provision

- (1) The court may, on cause shown, allow a preliminary hearing to proceed notwithstanding the absence of the accused.
- (2) Where—
  - (a) the accused is a body corporate;
  - (b) it fails to appear at a preliminary hearing;
  - (c) the court allows the hearing to proceed in its absence under subsection (1) above; and
  - (d) no plea is entered on its behalf at the hearing,
 it shall be treated for the purposes of proceedings at the preliminary hearing as having pled not guilty.
- (3) Where, at a preliminary hearing, a trial diet is appointed, the accused shall appear at the trial diet and answer the indictment.
- (4) At a preliminary hearing, the court—
  - (a) shall take into account any written record lodged under section 72E of this Act; and
  - (b) may ask the prosecutor and the accused any question in connection with any matter which it is required to dispose of or ascertain under section 72 of this Act.



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- (5) The proceedings at a preliminary hearing shall be recorded by means of shorthand notes or by mechanical means.
- (6) Subsections (2) to (4) of section 93 of this Act shall apply for the purposes of the recording of proceedings at a preliminary hearing in accordance with subsection (5) above as they apply for the purposes of the recording of proceedings at the trial in accordance with subsection (1) of that section.
- (7) The Clerk of Justiciary shall prepare, in such form and manner as may be prescribed by Act of Adjournal, a minute of proceedings at a preliminary hearing, which shall record, in particular, whether any preliminary pleas or issues were disposed of and, if so, how they were disposed of.
- (8) In this section, references to a preliminary hearing include an adjourned preliminary hearing.
- (9) In this section and sections 72 to 72C, “the court” means the High Court.]

#### Textual Amendments

**F96** Ss. 72-72D substituted for ss. 72-73A (1.2.2005, 1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [ss. 1\(3\), 27\(1\)](#); [S.S.I. 2004/405, art. 2, Sch. 1](#) (subject to arts. 3-5); [S.S.I. 2005/168, art. 2, Sch.](#) (with art. 4); [S.S.I. 2006/59, art. 2, Sch.](#) (with art. 4(1)); [S.S.I. 2007/101, art. 2, Sch.](#) (with art. 4); [S.S.I. 2007/329, art. 2, Sch.](#) (with art. 4)); [S.S.I. 2008/57, art. 2](#) (with art. 3)

#### [<sup>F97</sup>72E Written record of state of preparation in certain cases

- (1) This section applies where, in any proceedings in the High Court, a solicitor has notified the Court under section 72F(1) of this Act that he has been engaged by the accused for the purposes of the conduct of his case at the preliminary hearing.
- (2) The prosecutor and the accused’s legal representative shall, not less than two days before the preliminary hearing—
  - (a) communicate with each other with a view to jointly preparing a written record of their state of preparation with respect to their cases (referred to in this section as “the written record”); and
  - (b) lodge the written record with the Clerk of Justiciary.
- (3) The High Court may, on cause shown, allow the written record to be lodged after the time referred to in subsection (2) above.
- (4) The written record shall—
  - (a) be in such form, or as nearly as may be in such form;
  - (b) contain such information; and
  - (c) be lodged in such manner,as may be prescribed by Act of Adjournal.
- (5) The written record may contain, in addition to the information required by virtue of subsection (4)(b) above, such other information as the prosecutor and the accused’s legal representative consider appropriate.
- (6) In this section—

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“the accused’s legal representative” means—

- (a) the solicitor referred to in subsection (1) above; or
- (b) where the solicitor has instructed counsel for the purposes of the conduct of the accused’s case at the preliminary hearing, either the solicitor or that counsel, or both of them; and

“counsel” includes a solicitor who has a right of audience in the High Court of Justiciary under section 25A (rights of audience in various courts including the High Court of Justiciary) of the Solicitors (Scotland) Act 1980 (c. 46).]

#### Textual Amendments

**F97** S. 72E inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 2, 27(1)**; [S.S.I. 2004/405](#), **art. 2, Sch. 1** (subject to [arts. 3-5](#))

#### [<sup>F98</sup>72F Engagement, dismissal and withdrawal of solicitor representing accused

- (1) In any proceedings on indictment, it is the duty of a solicitor who is engaged by the accused for the purposes of his defence at any part of the proceedings to notify the court and the prosecutor of that fact forthwith in writing.
- (2) A solicitor is to be taken to have complied with the duty under subsection (1) to notify the prosecutor of his engagement if, before service of the indictment, he—
  - (a) notified in writing the procurator fiscal for the district in which the charge against the accused was then being investigated that he was then engaged by the accused for the purposes of his defence; and
  - (b) had not notified that procurator fiscal in writing that he had been dismissed by the accused or had withdrawn from acting.
- (3) Where any such solicitor as is referred to in subsection (1) above—
  - (a) is dismissed by the accused; or
  - (b) withdraws,
 it is the duty of the solicitor to inform the court and the prosecutor of those facts forthwith in writing.
- (4) The prosecutor shall, for the purposes of subsections (1) and (3), be taken to be notified or informed of any fact in accordance with those subsections if—
  - (a) in proceedings in the High Court, the Crown Agent; or
  - (b) in proceedings on indictment in the sheriff court, the procurator fiscal for the district in which the trial diet is to be held,
 is so notified or, as the case may be, informed of the fact.
- (5) On being informed in accordance with subsection (3) above of the dismissal or withdrawal of the accused’s solicitor in any case to which subsections (6) and (7) below apply, the court shall order that, before the trial diet, there shall be a further pre-trial diet under this section.
- (6) This subsection applies to any case—
  - (a) where the accused is charged with an offence to which section 288C of this Act applies;
  - (b) in respect of which section 288E of this Act applies; or
  - (c) in which an order has been made under section 288F(2) of this Act.

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- (7) This subsection applies to any case in which—
- (a) the solicitor was engaged for the purposes of the defence of the accused—
    - (i) in the case of proceedings in the High Court, at the time of a preliminary hearing or, if a preliminary hearing was dispensed with under section 72B(1) of this Act, at the time it was so dispensed with;
    - (ii) in the case of solemn proceedings in the sheriff court, at the time of a first diet;
    - (iii) at the time of a diet under this section; or
    - (iv) in the case of a diet which, under subsection (11) below, is dispensed with, at the time when it was so dispensed with; and
  - (b) the court is informed as mentioned in subsection (3) above after that time but before the trial diet.
- (8) At a diet under this section, the court shall ascertain whether or not the accused has engaged another solicitor for the purposes of his defence at the trial.
- (9) A diet under this section shall be not less than 10 clear days before the trial diet.
- (10) A court may, at a diet under this section, postpone the trial diet for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.
- (11) 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.]

#### Textual Amendments

**F98** S. 72F inserted (4.12.2004) "after s. 72E" by virtue of [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 8, 27(1)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

#### [<sup>F99</sup>72G Service etc. on accused through a solicitor

- (1) In any proceedings on indictment, anything which is to be served on or given, notified or otherwise intimated to, the accused 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 notified the prosecutor under subsection (1) of section 72F of this Act that he is engaged by the accused for the purposes of his defence; and
    - (ii) has not informed the prosecutor under subsection (3) of that section that he has been dismissed by, or has withdrawn from acting for, the accused; or
  - (b) who—

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- (i) has been appointed to act for the purposes of the accused’s defence at the trial under section 92 or 288D of this Act; and
- (ii) has not been relieved of the appointment by the court.]

#### Textual Amendments

**F99** S. 72G inserted (4.12.2004) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 12, 27(1)**; [S.S.I. 2004/405](#), **art. 2**, **Sch. 1** (subject to arts. 3-5)

## 74 Appeals in connection with preliminary diets.

(1) Without prejudice to—

- (a) any right of appeal under section 106 or 108 of this Act; and
- (b) section 131 of this Act,

and subject to subsection (2) below, a party may with the leave of the court of first instance (granted either on the motion of the party or *ex proprio motu*) in accordance with such procedure as may be prescribed by Act of Adjournal, appeal to the High Court against a decision at a first diet or a preliminary [<sup>F103</sup>hearing] .

(2) An appeal under subsection (1) above—

- (a) may not be taken against a decision to adjourn the first [<sup>F104</sup>diet] or, as the case may be, preliminary [<sup>F105</sup>hearing] or to [<sup>F106</sup>accelerate or] postpone the trial diet;

[<sup>F107</sup>(aa) may not be taken against a decision taken by virtue of—

- (i) in the case of a first diet, section 71(1A),
  - (ii) in the case of a preliminary [<sup>F108</sup>hearing, section 72(6)(e) ] ,
- of this Act;]

[<sup>F109</sup>(ab) may not be taken against a decision at a preliminary hearing, in appointing a trial diet, to appoint or not to appoint it as a floating diet for the purposes of section 83A(2) of this Act;]

- (b) must be taken not later than 2 days after the decision.

(3) Where an appeal is taken under subsection (1) above, the High Court may postpone [<sup>F110</sup>any trial diet that has been appointed] for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.

[<sup>F111</sup>(3A) Where an appeal is taken under subsection (1) above against a decision at a preliminary hearing, the High Court may adjourn, or further adjourn, the preliminary hearing for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.]

(4) In disposing of an appeal under subsection (1) above the High Court—

- (a) may affirm the decision of the court of first instance or may remit the case to it with such directions in the matter as it thinks fit; [<sup>F112</sup>. . .
- (b) where the court of first instance has dismissed the indictment or any part of it, may reverse that decision and direct that the court of first instance fix

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- [<sup>F113</sup>(i) where the indictment is in respect of the High Court, a further preliminary hearing; or  
(ii) where the indictment is in respect of the sheriff court,]  
a trial diet, if it has not already fixed one as regards so much of the indictment as it has not dismissed.  
[<sup>F114</sup>(c) may on cause shown extend the period mentioned in section 65(1) of this Act.]

#### Textual Amendments

- F103** Word in s. 74(1) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 3(2), 27(1); S.S.I. 2004/405, art. 2, Sch. 1
- F104** Word in s. 74(2)(a) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 3(3)(a)(i), 27(1); S.S.I. 2004/405, art. 2, Sch. 1
- F105** Word in s. 74(2)(a) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 3(3)(a)(ii), 27(1); S.S.I. 2004/405, art. 2, Sch. 1
- F106** Words in s. 74(2)(a) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 22; S.S.I. 2004/405, art. 2, Sch. 1 (subject to arts. 3-5)
- F107** S. 74(2)(aa) inserted (1.4.2005 and 1.4.2006 for certain purposes and otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), ss. 2(4), 25; S.S.I. 2005/168, art. 2, Sch. (with art. 4); S.S.I. 2006/59, art. 2, Sch. (with art 4(1)); S.S.I. 2008/57, art. 2 (with art. 3)
- F108** Words s. 74(2)(aa)(ii) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 3(3)(a), 27(1); S.S.I. 2004/405, art. 2, Sch. 1
- F109** S. 74(2)(ab) inserted (1.2.2005) after (aa) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 3(3)(c), 27(1); S.S.I. 2004/405, art. 2, Sch. 1
- F110** Words in s. 74(3) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 3(4), 27(1); S.S.I. 2004/405, art. 2, Sch. 1
- F111** S. 74(3A) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 3(5), 27(1); S.S.I. 2004/405, art. 2, Sch. 1
- F112** Word in s. 74(4) repealed (1.8.1997) by 1997 c. 48, s. 62(1)(2), Sch. 1 para. 21(10)(a), Sch. 3; S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)
- F113** Words in s. 74(4)(b) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 3(6), 27(1); S.S.I. 2004/405, art. 2, Sch. 1
- F114** S. 74(4)(c) inserted (1.8.1997) by 1997 c. 48, s. 62(1)(2), Sch. 1 para. 21(10)(b); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)

## 75 Computation of certain periods.

Where the last day of any period mentioned in section 66(6), 67(3), <sup>F115</sup> . . . or 74 of this Act falls on a Saturday, Sunday or court holiday, such period shall extend to and include the next day which is not a Saturday, Sunday or court holiday.

#### Textual Amendments

- F115** Word in s. 75(1) repealed (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 23; S.S.I. 2004/405, art. 2, Sch. 1 (subject to arts. 3-5)

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### *Adjournment and alteration of diets*

#### <sup>F116</sup> <sup>F117</sup> **Adjournment and alteration of diets**

- 75A**
- (1) This section applies where any diet has been fixed in any proceedings on indictment.
  - (2) The court may, if it considers it appropriate to do so, adjourn the diet.
  - (3) However—
    - (a) in the case of a trial diet, the court may adjourn the diet under subsection (2) above only if the indictment is not brought to trial at the diet;
    - (b) if the court adjourns any diet under that subsection by reason only that, following enquiries for the purpose of ascertaining whether the accused has engaged a solicitor for the purposes of the conduct of his defence at or for the purposes of a preliminary hearing or at a trial, it appears to the court that he has not done so, the adjournment shall be for a period of not more than 48 hours.
  - (4) A trial diet in the High Court may be adjourned under subsection (2) above to a diet to be held at a sitting of the Court in another place.
  - (5) The court may, on the application of any party to the proceedings made at any time before commencement of any diet—
    - (a) discharge the diet; and
    - (b) fix a new diet for a date earlier or later than that for which the discharged diet was fixed.
  - (6) Before determining an application under subsection (5) above, the court shall give the parties an opportunity to be heard.
  - (7) However, where all the parties join in an application under that subsection, the court may determine the application without hearing the parties and, accordingly, may dispense with any hearing previously appointed for the purpose of subsection (6) above.
  - (8) Where there is a hearing for the purpose of subsection (6) above, the accused shall attend it unless the court permits the hearing to proceed notwithstanding the absence of the accused.
  - (9) In appointing a new trial diet under subsection (5)(b) above, the court—
    - (a) shall have regard to the state of preparation of the prosecutor and the accused with respect to their cases and, in particular, to the likelihood of the case being ready to proceed to trial on the date to be appointed for the trial diet; and
    - (b) may, if it appears to the court that there are any preliminary pleas, preliminary issues or other matters which require to be, or could with advantage be, disposed of or ascertained before the trial, appoint a diet to be held before the trial diet for the purpose of disposing of or, as the case may be, ascertaining them.
  - (10) A date for a new diet may be fixed under subsection (5)(b) above notwithstanding that the holding of the diet on that date would result in any provision of this Act as to the minimum or maximum period within which the diet is to be held or to commence not being complied with.
  - (11) In subsections (5) to (9) above, “the court” means—
    - (a) in the case of proceedings in the High Court, a single judge of that Court; and

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- (b) in the case of proceedings in the sheriff court, that court.
- (12) For the purposes of subsection (5) above—
- (a) a diet other than a trial diet shall be taken to commence when it is called; and
  - (b) a trial diet shall be taken to commence when the jury is sworn.]

#### Textual Amendments

- F116** S. 75A and crossheading inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\), ss. 15, 27\(1\)](#); [S.S.I. 2004/405, art. 2, Sch. 1](#) (subject to arts. 3-5)
- F117** S. 75A and crossheading inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\), ss. 15, 27\(1\)](#); [S.S.I. 2004/405, art. 2, Sch. 1](#) (subject to arts. 3-5)

VALID FROM 10/12/2007

#### **F118** **75B** Refixing diets

- (1) This section applies where in any proceedings on indictment any diet has been fixed for a non-sitting day.
- (2) The court may at any time before the non-sitting day—
- (a) discharge the diet; and
  - (b) fix a new diet for a date earlier or later than that for which the discharged diet was fixed.
- (3) That is, by acting—
- (a) of the court's own accord; and
  - (b) without the need for a hearing for the purpose.
- (4) In the case of a trial diet—
- (a) the prosecutor;
  - (b) the accused,
- shall be entitled to an adjournment of the new diet fixed if the court is satisfied that it is not practicable for that party to proceed with the case on that date.
- (5) The power of the court under subsection (1) above is not exercisable for the sole purpose of ensuring compliance with a time limit applying in the proceedings.
- (6) In subsections (1) and (2) above, a “non-sitting day” is a day on which the court is under this Act not required to sit.
- (7) In subsections (2) to (5) above, “the court” means—
- (a) in the case of proceedings in the High Court, a single judge of that Court;
  - (b) in the case of proceedings in the sheriff court, that court.]]

#### Textual Amendments

- F116** S. 75A and crossheading inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\), ss. 15, 27\(1\)](#); [S.S.I. 2004/405, art. 2, Sch. 1](#) (subject to arts. 3-5)



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**F118** S. 75B inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 39(1), 84**; [S.S.I. 2007/479](#), **art. 3(1)**, Sch. (as amended by [S.S.I. 2007/527](#))

### *Plea of guilty*

#### **76 Procedure where accused desires to plead guilty.**

- (1) Where an accused intimates in writing to the Crown Agent that he intends to plead guilty and desires to have his case disposed of at once, the accused may be served with an indictment (unless one has already been served) and a notice to appear at a diet of the appropriate court not less than four clear days after the date of the notice; and it shall not be necessary to lodge or give notice of any list of witnesses or productions.
- (2) In subsection (1) above, “appropriate court” means—
  - (a) in a case where at the time of the intimation mentioned in that subsection an indictment had not been served, either the High Court or the sheriff court; and
  - (b) in any other case, the court specified in the notice served under section 66(6) of this Act on the accused.
- (3) If at any such diet the accused pleads not guilty to the charge or pleads guilty only to a part of the charge, and the prosecutor declines to accept such restricted plea, the diet shall be deserted *pro loco et tempore* and thereafter the cause may proceed in accordance with the other provisions of this Part of this Act; except that in a case mentioned in paragraph (b) of subsection (2) above the court may postpone the trial diet [<sup>F119</sup>or, where the accused has been indicted to the High Court, the preliminary hearing] and the period of such postponement shall not count towards any time limit applying in respect of the case.

#### **Textual Amendments**

**F119** Words in s. 76(3) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 25, 27(1)**, **Sch. para. 24**; [S.S.I. 2004/405](#), **art. 2**, Sch. 1 (subject to arts. 3-5)

#### **77 Plea of guilty.**

- (1) Where at any diet the accused tenders a plea of guilty to the indictment or any part thereof he shall do so in open court and, subject to section 70(7) of this Act, shall, if he is able to do so, sign a written copy of the plea; and the judge shall countersign such copy.
- (2) Where the plea is to part only of the charge and the prosecutor does not accept the plea, such non-acceptance shall be recorded.
- (3) Where an accused charged on indictment with any offence tenders a plea of guilty to any other offence of which he could competently be found guilty on the trial of the indictment, and that plea is accepted by the prosecutor, it shall be competent to convict the accused of the offence to which he has so pled guilty and to sentence him accordingly.



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### Notice by accused

#### 78 Special defences, incrimination and notice of witnesses, etc.

- (1) It shall not be competent for an accused to state a special defence or to lead evidence calculated to exculpate the accused by incriminating a co-accused unless—
  - (a) a plea of special defence or, as the case may be, notice of intention to lead such evidence has been lodged and intimated in writing in accordance with subsection (3) below<sup>F120</sup> . . .
  - (b) the court, on cause shown, otherwise directs.
- (2) Subsection (1) above shall apply to a defence of automatism [<sup>F121</sup>, coercion or, in a prosecution for an offence to which section 288C of this Act applies, consent] as if it were a special defence.
- <sup>F122</sup>(2A) In subsection (2) 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.
- (2B) In subsection (2A) above, “complainer” has the same meaning as in section 274 of this Act.]
- (3) A plea or notice is lodged and intimated in accordance with this subsection—
  - (a) where [<sup>F123</sup>the case is to be tried in the High Court] , by lodging the plea or notice with the Clerk of Justiciary and by intimating the plea or notice to the Crown Agent and to any co-accused not less than [<sup>F124</sup>seven clear days before the preliminary hearing] ;
  - (b) where the [<sup>F125</sup>case is to be tried in the sheriff court] , by lodging the plea or notice with the sheriff clerk and by intimating it to the procurator fiscal and to any co-accused at or before the first diet.
- (4) It shall not be competent for the accused to examine any witnesses or to put in evidence any productions not included in the lists lodged by the prosecutor unless—
  - (a) written notice of the names and addresses of such witnesses and of such productions has been given—
    - (i) where the case is to be tried in the sheriff court, to the procurator fiscal of the district of the trial diet at or before the first diet; and
    - (ii) where the case is to be tried in the High Court, to the Crown Agent at least [<sup>F126</sup>seven clear days before the preliminary hearing]
  - (b) the court, on cause shown, otherwise directs.
- (5) A copy of every written notice required by subsection (4) above shall be lodged by the accused with the sheriff clerk of the district in which the trial diet is to be held, or in any case the trial diet of which is to be held in the High Court in Edinburgh with the Clerk of Justiciary, at or before
  - <sup>F127</sup>(a) where the case is to be tried in the High Court, the preliminary hearing;
  - (b) where the case is to be tried in the sheriff court, the trial diet,for the use of the court.] .

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### Textual Amendments

- F120** Words in s. 78(1)(a) repealed (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 25(a)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F121** Words in s. 78(2) substituted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), **s. 6(1)(a)**; S.S.I. 2002/443, **art. 3** (with art. 4(4))
- F122** S. 78(2A)(2B) inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), **s. 6(1)(b)**; S.S.I. 2002/443, **art. 3** (with art. 4(4))
- F123** Words in s. 78(3)(a) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 25(b)(i)(A)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F124** Words in s. 78(3)(a) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 25(b)(i)(B)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F125** Words in s. 78(3)(b) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 25(b)(ii)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F126** Words in s. 78(4)(a)(ii) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 25(c)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F127** Words in s. 78(5) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 25(d)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

### <sup>F128</sup>79 Preliminary pleas and preliminary issues.

- (1) Except by leave of the court on cause shown, no preliminary plea or preliminary issue shall be made, raised or submitted in any proceedings on indictment by any party unless his intention to do so has been stated in a notice under section 71(2) or, as the case may be, 72(3) or (6)(b)(i) of this Act.
- (2) For the purposes of this section and those sections—
  - (a) the following are preliminary pleas, namely—
    - (i) a matter relating to the competency or relevancy of the indictment;
    - (ii) an objection to the validity of the citation against a party, on the ground of any discrepancy between the record copy of the indictment and the copy served on him, or on account of any error or deficiency in such service copy or in the notice of citation; and
    - (iii) a plea in bar of trial; and
  - (b) the following are preliminary issues, namely—
    - (i) an application for separation or conjunction of charges or trials;
    - (ii) a preliminary objection under section 27(4A)(a), 255 or 255A of this Act [<sup>F129</sup>section 9(6) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) or that section of that Act as applied by section 234AA(11) of this Act] ;
    - (iii) an application under section 278(2) of this Act;
    - (iv) an objection by a party to the admissibility of any evidence;
    - (v) an assertion by a party that there are documents the truth of the contents of which ought to be admitted, or that there is any other matter which in his view ought to be agreed; and
    - (vi) any other point raised by a party, as regards any matter not mentioned in sub-paragraphs (i) to (v) above, which could in his opinion be resolved with advantage before the trial.

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- (3) No discrepancy, error or deficiency such as is mentioned in subsection (2)(a)(ii) above shall entitle an accused to object to plead to the indictment unless the court is satisfied that the discrepancy, error or deficiency tended substantially to mislead and prejudice the accused.
- (4) Where the court, under subsection (1) above, grants leave for a party to make, raise or submit a preliminary plea or preliminary issue (other than an objection to the admissibility of any evidence) without his intention to do so having been stated in a notice as required by that subsection, the court may—
  - (a) if it considers it appropriate to do so, appoint a diet to be held before the trial diet for the purpose of disposing of the plea or issue; or
  - (b) appoint the plea or issue to be disposed of at the trial diet.]

#### Textual Amendments

**F128** S. 79 substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. [13\(1\)](#), [27\(1\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)

**F129** Words in s. 79(2)(b)(ii) inserted (28.11.2004) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), ss. [144\(1\)](#), [145\(2\)](#), [Sch. 4 para. 5\(2\)](#), S.S.I. 2004/420, [art. 3](#), Sch. 1

### [<sup>F130</sup>79A Objections to admissibility of evidence raised after first diet or preliminary hearing

- (1) This section applies where a party seeks to raise an objection to the admissibility of any evidence after—
  - (a) in proceedings in the High Court, the preliminary hearing; or
  - (b) in proceedings on indictment in the sheriff court, the first diet.
- (2) The court shall not, under section 79(1) of this Act, grant leave for the objection to be raised if the party seeking to raise it has not given written notice of his intention to do so to the other parties.
- (3) However, the court may, where the party seeks to raise the objection after the commencement of the trial, dispense with the requirement under subsection (2) above for written notice to be given.
- (4) Where the party seeks to raise the objection after the commencement of the trial, the court shall not, under section 79(1) of this Act, grant leave for the objection to be raised unless it considers that it could not reasonably have been raised before that time.
- (5) Where the party seeks to raise the objection before the commencement of the trial and the court, under section 79(1), grants leave for it to be raised, the court shall—
  - (a) if it considers it appropriate to do so, appoint a diet to be held before the commencement of the trial for the purpose of disposing of the objection; or
  - (b) dispose of the objection at the trial diet.
- (6) In appointing a diet under subsection (5)(a) above, the court may postpone the trial diet for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.
- (7) The accused shall appear at any diet appointed under subsection (5)(a) above.

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- (8) For the purposes of this section, the trial shall be taken to commence when the jury is sworn.]

#### Textual Amendments

**F130** S. 79A inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 14(2), 27(1); S.S.I. 2004/405, art. 2, Sch. 1

#### *Alteration, etc, of diet*

### 80 Alteration and postponement of trial diet.

<sup>F131</sup> .....

#### Textual Amendments

**F131** S. 80 repealed (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 26; S.S.I. 2004/405, art. 2, Sch. 1 (subject to arts. 3-5)

### [<sup>F132</sup>81 Procedure where trial diet does not proceed.

- (1) The prosecutor shall not raise a fresh libel in a case in which the court has deserted the trial *simpliciter* unless the court's decision has been reversed on appeal.
- (2) Where a trial diet in any proceedings on indictment is deserted *pro loco et tempore* the court may appoint a further trial diet for a later date and the accused shall appear and answer the indictment at that diet.
- (3) In appointing a further trial diet under subsection (2) above, the court—
  - (a) shall have regard to the state of preparation of the prosecutor and the accused with respect to their cases and, in particular, to the likelihood of the case being ready to proceed to trial on the date to be appointed for the trial diet; and
  - (b) may, if it appears to the court that there are any preliminary pleas, preliminary issues or other matters which require to be, or could with advantage be, disposed of or ascertained before the trial diet, appoint a diet to be held before the trial diet for the purpose of disposing of or, as the case may be, ascertaining them.
- (4) Subsection (5) below applies where, in any proceedings on indictment in which a trial diet has been appointed or the accused has been cited to a trial diet in the sheriff court—
  - (a) the diet has been deserted *pro loco et tempore* for any reason and no further trial diet has been appointed under subsection (2) above; or
  - (b) the indictment falls or is for any other reason not brought to trial and the diet has not been continued, adjourned or postponed.
- (5) Where this subsection applies, the prosecutor may, at any time within the period of two months after the relevant date, give notice to the accused on another copy of the indictment to appear and answer the indictment—
  - (a) where the trial diet referred to in subsection (4) above was in the High Court—

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- (i) at a further preliminary hearing in that Court not less than seven clear days after service of the notice; or
    - (ii) where the charge is one that can lawfully be tried in the sheriff court, at a first diet not less than 15 clear days after service of the notice and not less than 10 clear days before the trial diet and at a trial diet not less than 29 clear days after service of the notice; or
  - (b) where the trial diet referred to in subsection (4) was in the sheriff court—
    - (i) at a further trial diet in that court not less than seven clear days after service of the notice; or
    - (ii) at a preliminary hearing in the High Court not less than 21 clear days after service of the notice.
- (6) Where notice is given to the accused under paragraph (a)(ii) or (b)(ii) of subsection (5) above, then for the purposes of section 65(4) of this Act—
  - (a) the giving of the notice shall be taken to be service of an indictment in respect of—
    - (i) in the case of a notice under paragraph (a)(ii) of subsection (5) above, the sheriff court; or
    - (ii) in the case of a notice under paragraph (b)(ii) of that subsection, the High Court; and
  - (b) the previous service of the indictment in respect of—
    - (i) in the case of a notice under paragraph (a)(ii) of subsection (5), the High Court; or
    - (ii) in the case of a notice under paragraph (b)(ii) of that subsection, the sheriff court,shall be disregarded.
- (7) A notice under subsection (5) above shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form.
- (8) In subsection (5) above, “the relevant date” means—
  - (a) where paragraph (a) of subsection (4) applies, the date on which the trial diet was deserted as mentioned in that paragraph; or
  - (b) where paragraph (b) of that subsection applies, the date of the trial diet referred to in that subsection.]

#### Textual Amendments

**F132** S. 81 substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\), ss. 9, 27\(1\); S.S.I. 2004/405, art. 2, Sch. 1](#) (subject to [arts. 3-5](#)) (as amended (31.1.2005) by [S.S.I. 2005/40, art. 3\(2\)](#) (subject to [art. 1\(3\)](#)))

## 82 Desertion or postponement where accused in custody.

Where—

- (a) a diet is deserted *pro loco et tempore*;
- (b) a diet is [<sup>F133</sup>continued, accelerated,] postponed or adjourned; or
- (c) an order is issued for the trial to take place at a different place from that first given notice of, [<sup>F134</sup>or, in the case of proceedings in the High Court, originally appointed by the Court,]

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the warrant of committal on which the accused is at the time in custody till liberated in due course of law shall continue in force.

#### Textual Amendments

**F133** Words in s. 82(b) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 27\(a\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)

**F134** Words in s. 82(c) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 27\(b\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)

### 83 Transfer of sheriff court solemn proceedings.

- (1) Where an accused person has been cited to attend a [F135 diet] of the sheriff court the prosecutor may [F136 apply to the sheriff for an order for the transfer of the proceedings to a sheriff court in another district in that sheriffdom F137 . . . and for adjournment to a [F135 diet] of that court] .

[F138(1A) Where—

- (a) an accused person has been cited to attend a [F139 diet] of the sheriff court; or
- (b) paragraph (a) above does not apply but it is competent so to cite an accused person,

and the prosecutor is informed by the sheriff clerk that, because of exceptional circumstances which could not reasonably have been foreseen, it is not practicable for that court (in subsection (2A)(b)(i) below referred to as the “relevant court”) or any other sheriff court in that sheriffdom to proceed with the case, the prosecutor—

- (i) may, where paragraph (b) above applies, so cite the accused; and
- (ii) shall, where paragraph (a) above applies or the accused is so cited by virtue of paragraph (i) above, as soon as practicable apply to the sheriff principal for an order for the transfer of the proceedings to a sheriff court in another sheriffdom F140 . . . and for adjournment to a [F139 diet] of that court.]

- (2) On an application under subsection (1) above the sheriff may—

- (a) after giving the accused or his counsel or solicitor an opportunity to be heard; or
  - (b) on the joint application of the parties,
- [F141 make such order as is mentioned in that subsection].

[F142(2A) On an application under subsection (1A) above the sheriff principal may make the order sought—

- (a) provided that the sheriff principal of the other sheriffdom consents; but
- (b) in a case where the trial (or part of the trial) would be transferred, shall do so only—
  - (i) if the sheriff of the relevant court, after giving the accused or his counsel an opportunity to be heard, consents to the transfer; or
  - (ii) on the joint application of the parties.

(2B) On the application of the prosecutor, a sheriff principal who has made an order under subsection (2A) above may, if the sheriff principal of the other sheriffdom mentioned in that subsection consents—

- (a) revoke; or

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(ii) vary so as to restrict the effect of,  
that order.]

[<sup>F143</sup>(2C) The sheriff may proceed under subsection (2) above on a joint application of the parties without hearing the parties and, accordingly, he may dispense with any hearing previously appointed for the purposes of considering the application.]

(3) <sup>F144</sup> .....

#### Textual Amendments

- F135** Words in s. 83(1) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 3), ss. 25, 27(1), **Sch. para. 28(a)(i)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F136** Words in s. 83(1) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 58(1)(a)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F137** Words in s. 83(1) repealed (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 3), ss. 25, 27(1), **Sch. para. 28(a)(ii)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F138** S. 83(1A) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 58(1)(b)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F139** Words in s. 83(1A) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 3), ss. 25, 27(1), **Sch. para. 28(b)(i)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F140** Words in s. 83(1A)(ii) repealed (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 3), ss. 25, 27(1), **Sch. para. 28(b)(ii)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F141** Words in s. 83(2) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 58(1)(c)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F142** S. 83(2A)-(2B) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 58(1)(d)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F143** S. 83(2C) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 3), ss. 25, 27(1), **Sch. para. 28(c)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F144** S. 83(3) repealed (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 3), ss. 25, 27(1), **Sch. para. 28(d)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

#### [<sup>F145</sup>Continuation of trial diet in the High Court

#### Textual Amendments

- F145** S. 83A and crossheading inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 5**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

#### [<sup>F146</sup>**83A** Continuation of trial diet in the High Court

- (1) Where, in any case which is to be tried in the High Court, the trial diet does not commence on the day appointed for the holding of the diet, the indictment shall fall.
- (2) However, where, in appointing a day for the holding of the trial diet, the Court has indicated that the diet is to be a floating diet, the diet and, if it is adjourned, the adjourned diet may, without having been commenced, be continued from sitting day to sitting day—
- (a) by minute, in such form as may be prescribed by Act of Adjournal, signed by the Clerk of Justiciary; and



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- (b) up to such maximum number of sitting days after the day originally appointed for the trial diet as may be so prescribed.
- (3) If such a trial diet or adjourned diet is not commenced by the end of the last sitting day to which it may be continued by virtue of subsection (2)(b) above, the indictment shall fall.
- (4) For the purposes of this section, a trial diet or adjourned trial diet shall be taken to commence when it is called.
- (5) In this section, “sitting day” means any day on which the court is sitting, but does not include any Saturday or Sunday or any day which is a court holiday.]]

#### Textual Amendments

**F146** S. 83A and crossheading inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [ss. 5, 27\(1\)](#); [S.S.I. 2004/405](#), [art. 2](#), [Sch. 1](#) (subject to [arts. 3-5](#))

### *Jurors for sittings*

#### **84 Juries: returns of jurors and preparation of lists.**

- (1) For the purposes of a trial, the sheriff principal shall return such number of jurors as he thinks fit or, in relation to a trial in the High Court, such other number as the Lord Justice Clerk or any Lord Commissioner of Justiciary may direct.
- (2) The Lord Justice General, whom failing the Lord Justice Clerk, may give directions as to the areas from which and the proportions in which jurors are to be summoned for trials to be held in the High Court, and for any such trial the sheriff principal of the sheriffdom in which the trial is to take place shall requisition the required number of jurors from the areas and in the proportions so specified.
- (3) Where a sitting of the High Court is to be held at a town in which the High Court does not usually sit, the jury summoned to try any case in such a sitting shall be summoned from the list of potential jurors of the sheriff court district in which the town is situated.
- (4) For the purpose of a trial in the sheriff court, the clerk of court shall be furnished with a list of names from lists of potential jurors of the sheriff court district in which the court is held containing the number of persons required.
- (5) The sheriff principal, in any return of jurors made by him to a court, shall take the names in regular order, beginning at the top of the list of potential jurors in each of the sheriff court districts, as required; and as often as a juror is returned to him, he shall mark or cause to be marked, in the list of potential jurors of the respective sheriff court districts the date when any such juror was returned to serve; and in any such return he shall commence with the name immediately after the last in the preceding return, without regard to the court to which the return was last made, and taking the subsequent names in the order in which they are entered, as directed by this subsection, and so to the end of the lists respectively.
- (6) Where a person whose name has been entered in the lists of potential jurors dies, or ceases to be qualified to serve as a juror, the sheriff principal, in making returns of jurors in accordance with the <sup>M3</sup>[Jurors \(Scotland\) Act 1825](#), shall pass over the name



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of that person, but the date at which his name has been so passed over, and the reason therefor, shall be entered at the time in the lists of potential jurors.

- (7) Only the lists returned in accordance with this section by the sheriffs principal to the clerks of court shall be used for the trials for which they were required.
- (8) The persons to serve as jurors at <sup>F147</sup>trials in the High Court sitting at a particular place on a particular day] shall be listed and their names and addresses shall be inserted in one roll <sup>F148</sup>. . . , and the list made up under this section shall be known as the “list of assize”.
- (9) When more than one case is set down for trial <sup>F149</sup>in the High Court sitting at a particular place on a particular day] , it shall not be necessary to prepare more than one list of assize, and such list <sup>F150</sup>. . . shall be the list of assize for <sup>F151</sup>all trials to be held in the High Court sitting in that particular place on that particular day] ; and the persons included in such list shall be summoned to serve generally for <sup>F152</sup>all such trials] , and only one general execution of citation shall be returned against them; and a copy of the list of assize, certified by one of the clerks of court, shall have the like effect, for all purposes for which the list may be required, as the principal list of assize authenticated as aforesaid.
- (10) No irregularity in—
- (a) making up the lists in accordance with the provisions of this Act;
  - (b) transmitting the lists;
  - (c) <sup>F153</sup> . . . . .
  - (d) summoning jurors; or
  - (e) in returning any execution of citation,

shall constitute an objection to jurors whose names are included in the jury list, subject to the ruling of the court in relation to the effect of an objection as to any criminal act by which jurors may be returned to serve in any case contrary to this Act or the <sup>M4</sup>Jurors (Scotland) Act 1825.

**Textual Amendments**

- F147** Words in s. 84(8) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 3), ss. 25, 27(1), **Sch. para. 29(a)(i)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F148** Words in s. 84(8) repealed (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 3), ss. 25, 27(1), **Sch. para. 29(a)(ii)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F149** Words in s. 84(9) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 3), ss. 25, 27(1), **Sch. para. 29(b)(i)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F150** Words in s. 84(9) repealed (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 3), ss. 25, 27(1), **Sch. para. 29(b)(ii)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F151** Words in s. 84(9) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 3), ss. 25, 27(1), **Sch. para. 29(b)(iii)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F152** Words in s. 84(9) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 3), ss. 25, 27(1), **Sch. para. 29(b)(iv)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F153** S. 84(10)(c) repealed (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 3), ss. 25, 27(1), **Sch. para. 29(c)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

**Marginal Citations**

- M3** 6 Geo. 4. 1825 c.22.  
**M4** 6 Geo 4. 1825 c.22.

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## 85 Juries: citation and attendance of jurors.

- (1) It shall not be necessary to serve any list of jurors upon the accused,<sup>F154</sup> . . .
- [<sup>F155</sup>[<sup>F156</sup>(2) A list of jurors shall—
- (a) be prepared and kept in such form and manner; and
  - (b) contain such minimum number of names, as may be prescribed by Act of Adjournal.]
- (2A) The clerk of the court before which the trial is take place shall, on an application made to him by or on behalf of an accused, supply the accused, free of charge, on the day on which the trial diet is called, and before the oath has been administered to the jurors for the trial of the accused, with a copy of a list of jurors prepared under subsection (2) above.
- (2B) Where an accused has been supplied under subsection (2A) above with a list of jurors—
- (a) neither he nor any person acting on his behalf shall make a copy of that list, or any part thereof; and
  - (b) he or his representative shall return the list to the clerk of the court after the oath has been administered to the jurors for his trial.
- (2C) A person who fails to comply with subsection (2B) above shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.]
- (3) It shall not be necessary to summon all the jurors contained in any list of jurors under this Act, but it shall be competent to summon such jurors only, commencing from the top of the list, as may be necessary to ensure a sufficient number for the trial of the cases which remain for trial at the date of the citation of the jurors, and such number shall be fixed by the clerk of the court in which the trial diet is to be called, or in any case in the High Court by the Clerk of Justiciary, and the jurors who are not so summoned shall be placed upon the next list issued, until they have attended to serve.
- (4) The sheriff clerk of the sheriffdom in which [<sup>F157</sup>the High Court is to sit] or the sheriff clerk of the sheriff court district in which any juror is to be cited where the citation is for a trial before a sheriff, shall fill up and sign a proper citation addressed to each such juror, and shall cause the same to be transmitted to him by letter, sent to him at his place of residence as stated in the lists of potential jurors by registered post or recorded delivery or to be served on him by an officer of law; and a certificate under the hand of such sheriff clerk of the citation of any jurors or juror in the manner provided in this subsection shall be a legal citation.
- (5) The sheriff clerk of the sheriffdom in which [<sup>F158</sup>the High Court is to sit on any particular day] shall issue citations to the whole jurors required for [<sup>F159</sup>trials to be held in the High Court sitting in the sheriffdom on that day] , whether the jurors reside in that or in any other sheriffdom.
- (6) Persons cited to attend as jurors may, unless they have been excused in respect thereof under section 1 of the <sup>M5</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1980, be fined up to level 3 on the standard scale if they fail to attend in compliance with the citation.
- (7) A fine imposed under subsection (6) above may, on application, be remitted—
- (a) by a Lord Commissioner of Justiciary where imposed in the High Court;

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(b) by the sheriff court where imposed in the sheriff court,  
and no court fees or expenses shall be exigible in respect of any such application.

(8) A person shall not be exempted by sex or marriage from the liability to serve as a juror.

#### Textual Amendments

- F154** Words in s. 85(1) repealed (1.8.1997) by 1997 c. 48, ss. 58(2), 62(2), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)
- F155** S. 85(2)(2A)(2B)(2C) substituted (1.8.1997) for s. 85(2) by 1997 c. 48, s. 58(3); S.I. 1997/1714, art. 3, **Sch.** (subject to arts. 4, 5)
- F156** S. 85(2) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 3), ss. 25, 27(1), **Sch. para. 30(a)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F157** Words in s. 85(4) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 3), ss. 25, 27(1), **Sch. para. 30(b)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F158** Words in s. 85(5) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 3), ss. 25, 27(1), **Sch. para. 30(c)(i)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F159** Words in s. 85(5) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 3), ss. 25, 27(1), **Sch. para. 30(c)(ii)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

#### Marginal Citations

**M5** 1980 c.55.

## 86 Jurors: excusal and objections.

- (1) Where, before a juror is sworn to serve, the parties jointly apply for him to be excused the court shall, notwithstanding that no reason is given in the application, excuse that juror from service.
- (2) Nothing in subsection (1) above shall affect the right of the accused or the prosecutor to object to any juror on cause shown.
- (3) If any objection is taken to a juror on cause shown and such objection is founded on the want of sufficient qualification as provided by section 1(1) of the <sup>M6</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1980, such objection shall be proved only by the oath of the juror objected to.
- (4) No objection to a juror shall be competent after he has been sworn to serve.

#### Marginal Citations

**M6** 1980 c.55.

### *Non-availability of judge*

## 87 Non-availability of judge.

- (1) Where the court is unable to proceed owing to the death, illness or absence of the presiding judge, the clerk of court may convene the court (if necessary) and—
  - (a) in a case where no evidence has been led, adjourn the diet and any other diet appointed for [<sup>F160</sup>the same day] to—

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- (i) a time later the same day, or a date not more than seven days later, when he believes a judge will be available; or
- (ii) a later [<sup>F161</sup>date] not more than two months after the date of the adjournment; or
- (b) in a case where evidence has been led—
  - (i) adjourn the diet and any other diet appointed for [<sup>F162</sup>the same day] to a time later the same day, or a date not more than seven days later, when he believes a judge will be available; or
  - (ii) with the consent of the parties, desert the diet *pro loco et tempore*.
- (2) Where a diet has been adjourned under sub-paragraph (i) of either paragraph (a) or paragraph (b) of subsection (1) above the clerk of court may, where the conditions of that subsection continue to be satisfied, further adjourn the diet under that sub-paragraph; but the total period of such adjournments shall not exceed seven days.
- (3) Where a diet has been adjourned under subsection (1)(b)(i) above the court may, at the adjourned diet—
  - (a) further adjourn the diet; or
  - (b) desert the diet *pro loco et tempore*.
- (4) Where a diet is deserted in pursuance of subsection (1)(b)(ii) or (3)(b) above, the Lord Advocate may raise and insist in a new indictment, and—
  - (a) where the accused is in custody it shall not be necessary to grant a new warrant for his incarceration, and the warrant or commitment on which he is at the time in custody till liberation in due course of law shall continue in force; and
  - (b) where the accused is at liberty on bail, his bail shall continue in force.

#### Textual Amendments

**F160** Words in s. 87(1)(a) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 3), ss. 25, 27(1), **Sch. para. 31(a)(i)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

**F161** Words in s. 87(1)(a)(ii) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 3), ss. 25, 27(1), **Sch. para. 31(a)(ii)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

**F162** Words in s. 87(1)(b)(i) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 3), ss. 25, 27(1), **Sch. para. 31(b)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

#### [<sup>F163</sup>87A Disposal of preliminary matters at trial diet

Where—

- (a) any preliminary plea or issue; or
- (b) in a case to be tried in the High Court, any application, notice or other matter referred to in section 72(6)(b)(iii) or (iv) of this Act,

is to be disposed of at the trial diet, it shall be so disposed of before the jury is sworn, unless, where it is a preliminary issue consisting of an objection to the admissibility of any evidence, the court at the trial diet considers it is not capable of being disposed of before then.]

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### Textual Amendments

**F163** S. 87A inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 3\)](#), ss. [13\(2\)](#), [27\(1\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1

## *Jury for trial*

### **88 Plea of not guilty, balloting and swearing of jury, etc.**

- (1) Where the accused pleads not guilty, the clerk of court shall record that fact and proceed to ballot the jury.
- (2) The jurors for the trial shall be chosen in open court by ballot from the list of persons summoned in such manner as shall be prescribed by Act of Adjournal, and the persons so chosen shall be the jury to try the accused, and their names shall be recorded in the minutes of the proceedings.
- (3) It shall not be competent for the accused or the prosecutor to object to a juror on the ground that the juror has not been duly cited to attend.
- (4) Notwithstanding subsection (1) above, the jurors chosen for any particular trial may, when that trial is disposed of, without a new ballot serve on the trials of other accused, provided that—
  - (a) the accused and the prosecutor consent;
  - (b) the names of the jurors are contained in the list of jurors; and
  - (c) the jurors are duly sworn to serve on each successive trial.
- (5) When the jury has been balloted, the clerk of court shall inform the jury of the charge against the accused—
  - (a) by reading the words of the indictment (with the substitution of the third person for the second); or
  - (b) if the presiding judge, because of the length or complexity of the indictment, so directs, by reading to the jury a summary of the charge approved by the judge,and copies of the indictment shall be provided for each member of the jury without lists of witnesses or productions.
- (6) After reading the charge as mentioned in subsection (5) above and any special defence as mentioned in section 89(1) of this Act, the clerk of court shall administer the oath in common form.
- (7) The court may excuse a juror from serving on a trial where the juror has stated the ground for being excused in open court.
- (8) Where a trial which is proceeding is adjourned from one day to another, the jury shall not be secluded during the adjournment, unless, on the motion of the prosecutor or the accused or *ex proprio motu* the court sees fit to order that the jury be kept secluded.

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

**C10** S. 88(1) excluded by S.I. 1996/513, Sch. 2 rule 14.1A(1) (as inserted (1.6.2010) by Act of Adjournal (Criminal Procedure Rules Amendment) (Miscellaneous) 2010 (S.S.I. 2010/184), para. 3)

### 89 Jury to be informed of special defence.

- (1) Subject to subsection (2) below, where the accused has lodged a plea of special defence, the clerk of court shall, after informing the jury, in accordance with section 88(5) of this Act, of the charge against the accused, and before administering the oath, read to the jury the plea of special defence.
- (2) Where the presiding judge on cause shown so directs, the plea of special defence shall not be read over to the jury in accordance with subsection (1) above; and in any such case the judge shall inform the jury of the lodging of the plea and of the general nature of the special defence.
- (3) Copies of a plea of special defence shall be provided for each member of the jury.

### 90 Death or illness of jurors.

- (1) Where in the course of a trial—
  - (a) a juror dies; or
  - (b) the court is satisfied that it is for any reason inappropriate for any juror to continue to serve as a juror,
 the court may in its discretion, on an application made by the prosecutor or an accused, direct that the trial shall proceed before the remaining jurors (if they are not less than twelve in number), and where such direction is given the remaining jurors shall be deemed in all respects to be a properly constituted jury for the purpose of the trial and shall have power to return a verdict accordingly whether unanimous or, subject to subsection (2) below, by majority.
- (2) The remaining jurors shall not be entitled to return a verdict of guilty by majority unless at least eight of their number are in favour of such verdict and if, in any such case, the remaining jurors inform the court that—
  - (a) fewer than eight of their number are in favour of a verdict of guilty; and
  - (b) there is not a majority in favour of any other verdict,
 they shall be deemed to have returned a verdict of not guilty.

*[<sup>F164</sup>Obstructive witnesses*

#### Textual Amendments

**F164** Ss. 90A-90E inserted (1.2.2005 for specified purposes and otherwise prosp.) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 11, 27(1); S.S.I. 2004/405, art. 2, Sch. 1 (with transitional provision in arts. 3-5)

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## 90A Apprehension of witnesses in proceedings on indictment

- (1) In any proceedings on indictment, 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 inquiry 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 is necessary for the execution of the warrant, to break open shut and lockfast places.
- (8) It shall not be competent, in any proceedings on indictment, for a court to issue a warrant for the apprehension of a witness otherwise than in accordance with this section.
- (9) A person apprehended under a warrant issued under this section shall wherever practicable be brought before the court not later than in the course of the first day on which—
  - (a) in the case of a warrant issued by a single judge of the High Court, that Court;
  - (b) in any other case, the court,is sitting after he is taken into custody.
- (10) In this section and section 90B, “the court” means, except where the context requires otherwise—
  - (a) where the witness is to give evidence in proceedings in the High Court, a single judge of that Court; or
  - (b) where the witness is to give evidence in proceedings on indictment in the sheriff court, any sheriff court with jurisdiction in relation to the proceedings.



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## **90B Orders in respect of witnesses apprehended under section 90A**

- (1) Where a witness is brought before the court in pursuance of a warrant issued under section 90A 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) 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.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) Where the court makes an order under subsection (1)(a) above in respect of a witness, the court shall, on the application of the witness—
  - (a) consider whether the imposition of a remote monitoring requirement would enable it to make an order under subsection (1)(b) above releasing the witness on bail subject to a movement restriction condition; and
  - (b) if so—
    - (i) make an order under subsection (1)(b) above releasing the witness on bail subject to such a condition (as well as such other conditions required to be imposed under subsection (5) above); and
    - (ii) in the order, impose, as a further condition under subsection (5) above, a remote monitoring requirement.
- (8) Subsections (7) to (19) of section 24A of this Act apply in relation to remote monitoring requirements imposed under subsection (7)(b)(ii) above and to the imposing of such requirements as they apply to remote monitoring requirements imposed under section 24A(1) or (2) of this Act and the imposing of such requirements, but with the following modifications—

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- (a) references to a remote monitoring requirement imposed under section 24A(1) or (2) of this Act shall be read as if they included references to a remote monitoring requirement imposed under subsection (7)(b)(ii) above;
  - (b) 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.
- (9) The powers conferred and duties imposed by sections 24B to 24D of this Act are exercisable in relation to remote monitoring requirements imposed under subsection (7)(b)(ii) above as they are exercisable in relation to remote monitoring requirements imposed under subsection (1) or (2) of section 24A of this Act; and—
- (a) references in those sections to remote monitoring requirements shall be read accordingly; and
  - (b) references to the imposition of any requirement as a further condition of bail shall be read as if they were references to the imposition of the requirement as a further condition under subsection (5) above.
- (10) Section 25 of this Act (which makes provision for an order granting bail to specify the conditions imposed on bail and the accused’s proper domicile of citation) 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.
- (11) In this section—
- (a) “a movement restriction condition” means, in relation to a witness released on bail under subsection (1)(b) above, a condition imposed under subsection (5) above restricting the witness’s movements, including such a condition requiring the witness to be, or not to be, in any place or description of place for, or during, any period or periods or at any time; and
  - (b) “a remote monitoring requirement” means, in relation to a movement restriction condition, a requirement that compliance with the condition be remotely monitored.

### **90C Breach of bail under section 90B(1)(b)**

- (1) A witness who, having been released on bail by virtue of an order under subsection (1) (b) of section 90B 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 (5) of that section,
- shall be guilty of an offence and liable on conviction on indictment to the penalties specified in subsection (2) below.
- (2) Those penalties are—
- (a) a fine; and
  - (b) imprisonment for a period not exceeding two years.

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- (3) Subsection (4) below applies in proceedings against a witness for an offence under paragraph (b) of subsection (1) above where the condition referred to in that paragraph is—
- (a) a movement restriction condition (within the meaning of section 90B(11) of this Act) in respect of which a remote monitoring requirement has been imposed under section 90B(7)(b)(ii) of this Act; or
  - (b) a requirement imposed under section 24D(3)(b)(as extended by section 90B(9)) of this Act.
- (4) In proceedings in which this subsection applies, evidence of—
- (a) in the case referred to in subsection (3)(a) above, the presence or absence of the witness at a particular place at a particular time; or
  - (b) in the case referred to in subsection (3)(b) above, any tampering with or damage to a device worn or carried by the witness for the purpose of remotely monitoring his whereabouts,
- may, subject to subsections (7) and (8) below, be given by the production of the document or documents referred to in subsection (5) below.
- (5) That document or those documents is or are a document or documents bearing to be—
- (a) a statement automatically produced by a device specified in regulations made under section 24D(4)(as extended by section 90B(9)) of this Act by which the witness’s whereabouts were remotely monitored; and
  - (b) a certificate signed by a person nominated for the purpose of this paragraph by the Scottish Ministers that the statement relates to—
    - (i) in the case referred to in subsection (3)(a) above, the whereabouts of the witness at the dates and times shown in the statement; or
    - (ii) in the case referred to in subsection (3)(b) above, any tampering with or damage to the device.
- (6) The statement and certificate mentioned in subsection (5) above shall, when produced in the proceedings, be sufficient evidence of the facts set out in them.
- (7) Neither the statement nor the certificate mentioned in subsection (5) above shall be admissible in evidence unless a copy of both has been served on the witness prior to the trial.
- (8) Without prejudice to subsection (7) above, where it appears to the court that the witness has had insufficient notice of the statement or certificate, it may adjourn the trial or make an order which it thinks appropriate in the circumstances.
- (9) In subsections (7) and (8), “the trial” means the trial in the proceedings against the witness referred to in subsection (3) above.
- (10) 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 90B(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 90B(1)(b) of this Act in respect of the witness; and
  - (c) in subsection (4)—

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- (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 90B(1)(b) 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 90B(1)(a) or (c) of this Act in respect of the witness”; and
- (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”.

#### **90D Review of orders under section 90B(1)(a) or (b)**

- (1) Where a court has made an order under subsection (1)(a) of section 90B of this Act, the court may, on the application of the witness in respect of whom the order was made, on cause shown 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 90B 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 and on cause shown—
    - (i) review the conditions imposed under subsection (5) 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 (5) of that section;
  - (b) on the application of the party who made the application under section 90A(1) of this Act in respect of the witness, review the order and the conditions imposed under subsection (5) of that section at the time the order was made, and
    - (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 (5) of that section.
- (3) The court may not review an order by virtue of subsection (2)(b) above unless the 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 90B(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

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- (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 90B(1).

### **90E Appeals in respect of orders under section 90B(1)**

- (1) Any of the parties specified in subsection (2) below may appeal to the High Court against—
- (a) any order made under subsection (1)(a) or (c) of section 90B of this Act; or
  - (b) where an order is made under subsection (1)(b) of that section—
    - (i) the order;
    - (ii) any of the conditions imposed under subsection (5) 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 Lord Advocate shall be sufficient intimation to the prosecutor.
- (4) An appeal under this section shall be disposed of by the High Court or any Lord Commissioner of Justiciary in court or in chambers after such inquiry 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 High Court or, as the case may be, the Lord Commissioner of Justiciary when disposing of the appeal as it applies to a court when remanding or committing a person of the witness's age for trial or sentence.]

### *Trial*

#### **91 Trial to be continuous.**

Every trial shall proceed from day to day until it is concluded unless the court sees cause to adjourn over a day or days.

#### **92 Trial in presence of accused.**

- (1) Without prejudice to section 54 of this Act, and subject to [F165 subsections (2) and (2A)] 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—

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- (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 <sup>F166</sup> . . . a solicitor to represent his interests during such absence.

[<sup>F167</sup>(2A) If—

- (a) after evidence has been led which substantially implicates the accused in respect of the offence charged in the indictment or, where two or more offences are charged in the indictment, any of them, the accused fails to appear at the trial diet; and
- (b) the failure to appear occurred at a point in proceedings where the court is satisfied that it is in the interests of justice to do so,

then the court may, on the motion of the prosecutor and after hearing the parties on the motion, proceed with the trial and dispose of the case in the absence of the accused.

(2B) Where a motion is made under subsection (2A) above, the court shall—

- (a) if satisfied that there is a solicitor with authority to act for the purposes of—
  - (i) representing the accused’s interests at the hearing on the motion; and
  - (ii) if the motion is granted, the accused’s defence at the trial,allow that solicitor to act for those purposes; or
- (b) if there is no such solicitor, at its own hand appoint a solicitor to act for those purposes.

(2C) It is the duty of a solicitor appointed under subsection (2) or (2B)(b) above to act in the best interests of the accused.

(2D) In all other respects, a solicitor so appointed has, and may be made subject to, the same obligations and has, and may be given, the same authority as if engaged by the accused; and any employment of and instructions given to counsel by the solicitor shall proceed and be treated accordingly.

(2E) Where the court is satisfied that—

- (a) a solicitor allowed to act under subsection (2B)(a) above no longer has authority to act; or
- (b) a solicitor appointed under subsection (2) or (2B)(b) above is no longer able to act in the best interests of the accused,

the court may relieve that solicitor and appoint another solicitor for the purposes referred to in subsection (2) or, as the case may be, (2B) above.

(2F) Subsections (2B)(b) and (2E) above shall not apply in the case of proceedings—

- (a) in respect of a sexual offence to which section 288C of this Act applies; or
- (b) in respect of which section 288E of this Act applies; or
- (c) in which an order has been made under section 288F(2) of this Act.]

(3) From the commencement of the leading of evidence in a trial for rape or the like the judge may, if he thinks fit, cause all persons other than the accused and counsel and solicitors to be removed from the court-room.

[<sup>F168</sup>(4) In this section—

- (a) references to a solicitor appointed under subsection (2) or (2B)(b) above include references to a solicitor appointed under subsection (2E) above;

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- (b) “counsel” includes, in relation to the High Court of Justiciary, a solicitor who has a right of audience in that Court under section 25A of the Solicitors (Scotland) Act 1980 (c. 46).]

#### Textual Amendments

- F165** Words in s. 92(1) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [ss. 10\(1\)](#), 27(1); S.S.I. 2004/405, [art. 2](#), Sch. 1 (with savings in arts. 3-5)
- F166** Words in s. 92(2) repealed (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [ss. 10\(2\)](#), 27(1); S.S.I. 2004/405, [art. 2](#), Sch. 1 (with savings in arts. 3-5)
- F167** S. 92(2A)-(2F) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [ss. 10\(3\)](#), 27(1); S.S.I. 2004/405, [art. 2](#), Sch. 1 (with savings in arts. 3-5) (as amended (31.1.2005) by S.S.I. 2005/40, [art. 3\(3\)](#) (subject to [art. 1\(3\)](#)))
- F168** S. 92(4) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [ss. 10\(4\)](#), 27(1); S.S.I. 2004/405, [art. 2](#), Sch. 1 (with savings in arts. 3-5)

### 93 Record of trial.

- (1) The proceedings at the trial of any person who, if convicted, is entitled to appeal under Part VIII of this Act, shall be recorded by means of shorthand notes or by mechanical means.
- (2) A shorthand writer shall—
- sign the shorthand notes taken by him of such proceedings and certify them as being complete and correct; and
  - retain the notes.
- (3) A person recording such proceedings by mechanical means shall—
- certify that the record is true and complete;
  - specify in the certificate the proceedings or, as the case may be, the part of the proceedings to which the record relates; and
  - retain the record.
- (4) The cost of making a record under subsection (1) above shall be defrayed, in accordance with scales of payment fixed for the time being by Treasury, out of money provided by Parliament.
- (5) In subsection (1) above “proceedings at the trial” means the whole proceedings including, without prejudice to that generality—
- discussions—
    - on any objection to the relevancy of the indictment;
    - with respect to any challenge of jurors; and
    - on all questions arising in the course of the trial;
  - the decision of the court on any matter referred to in paragraph (a) above;
  - the evidence led at the trial;
  - any statement made by or on behalf of the accused whether before or after the verdict;
  - the judge’s charge to the jury;
  - the speeches of counsel or agent;
  - the verdict of the jury;



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- (h) the sentence by the judge.

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

**C11** S. 93(2)-(4) applied (3.11.2003 but only in respect of summary proceedings) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **ss. 21(6)**, 89; S.S.I. 2003/475, **art. 2**, Sch.

**94 Transcripts of record and documentary productions.**

- (1) The Clerk of Justiciary may direct that a transcript of a record made under section 93(1) of this Act, or any part thereof, be made and delivered to him for the use of any judge.
- (2) Subject to subsection (3) below, the Clerk of Justiciary shall, if requested to do so by—
- (a) the Secretary of State [<sup>F169</sup>or, subject to subsection (2B) below, the prosecutor] ; or
  - (b) any other person [<sup>F170</sup>, not being a person convicted at the trial,] on payment of such charges as may be fixed for the time being by Treasury,
- direct that such a transcript be made and sent to the person who requested it.

[<sup>F171</sup>(2A) If—

- (a) on the written application of a person convicted at the trial and granted leave to appeal; and
- (b) on cause shown,

a judge of the High Court so orders, the Clerk of Justiciary shall direct, on payment of such charges as are mentioned in paragraph (b) of subsection (2) above, that such a transcript be made and sent to that person.

- (2B) Where, as respects any person convicted at the trial, the Crown Agent has received intimation under section 107(10) of this Act, the prosecutor shall not be entitled to make a request under subsection (2)(a) above; but if, on the written application of the prosecutor and on cause shown, a judge of the High Court so orders, the Clerk of Justiciary shall direct that such a transcript be made and sent to the prosecutor.

(2C) Any application under subsection (2A) above shall—

- (a) be made within 14 days after the date on which leave to appeal was granted or within such longer period after that date as a judge of the High Court may, on written application and on cause shown, allow; and
- (b) be intimated forthwith by the applicant to the prosecutor.

(2D) The prosecutor may, within 7 days after receiving intimation under subsection (2C) (b) above, make written representations to the court as respects the application under subsection (2A) above (the application being determined without a hearing).

(2E) Any application under subsection (2B) above shall—

- (a) be made within 14 days after the receipt of intimation mentioned in that subsection or within such longer period after that receipt as a judge of the High Court may, on written application and on cause shown, allow; and
- (b) be intimated forthwith by the prosecutor to the person granted leave to appeal.

(2F) The person granted leave to appeal may, within 7 days after receiving intimation under subsection (2E)(b) above, make written representations to the court as respects the

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application under subsection (2B) above (the application being determined without a hearing).]

- (3) The Secretary of State may, after consultation with the Lord Justice General, by order made by statutory instrument provide that in any class of proceedings specified in the order the Clerk of Justiciary shall only make a direction under subsection (2)(b) above if satisfied that the person requesting the transcript is of a class of person so specified and, if purposes for which the transcript may be used are so specified, intends to use it only for such a purpose; and different purposes may be so specified for different classes of proceedings or classes of person.
- (4) Where subsection (3) above applies as respects a direction, the person to whom the transcript is sent shall, if purposes for which that transcript may be used are specified by virtue of that subsection, use it only for such a purpose.
- (5) A statutory instrument containing an order under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A direction under subsection (1) or (2) above may require that the transcript be made by the person who made the record or by such competent person as may be specified in the direction; and that person shall comply with the direction.
- (7) A transcript made in compliance with a direction under subsection (1) or (2) above—
  - (a) shall be in legible form; and
  - (b) shall be certified by the person making it as being a correct and complete transcript of the whole or, as the case may be, the part 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.
- (8) The cost of making a transcript in compliance with a direction under subsection (1) or (2)(a) above shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of money provided by Parliament.
- (9) The Clerk of Justiciary shall, on payment of such charges as may be fixed for the time being by the Treasury, provide a copy of any documentary production lodged in connection with an appeal under this Part of this Act to such of the following persons as may request it—
  - (a) the prosecutor;
  - (b) any person convicted in the proceedings;
  - (c) any other person named in, or immediately affected by, any order made in the proceedings; and
  - (d) any person authorised to act on behalf of any of the persons mentioned in paragraphs (a) to (c) above.

#### Textual Amendments

**F169** Word in s. 94(2)(a) added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 65(a)(i), 89; S.S.I. 2003/288, art. 2, Sch.

**F170** Words s. 94(2)(b) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 65(a)(ii), 89; S.S.I. 2003/288, art. 2, Sch.

**F171** S. 94(2A)-(2F) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 65(b), 89; S.S.I. 2003/288, art. 2, Sch.

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## **95 Verdict by judge alone.**

- (1) Where, at any time after the jury has been sworn to serve in a trial, the prosecutor intimates to the court that he does not intend to proceed in respect of an offence charged in the indictment, the judge shall acquit the accused of that offence and the trial shall proceed only in respect of any other offence charged in the indictment.
- (2) Where, at any time after the jury has been sworn to serve in a trial, the accused intimates to the court that he is prepared to tender a plea of guilty as libelled, or such other plea as the Crown is prepared to accept, in respect of any offence charged in the indictment, the judge shall accept the plea tendered and shall convict the accused accordingly.
- (3) Where an accused is convicted under subsection (2) above of an offence—
  - (a) the trial shall proceed only in respect of any other offence charged in the indictment; and
  - (b) without prejudice to any other power of the court to adjourn the case or to defer sentence, the judge shall not sentence him or make any other order competent following conviction until a verdict has been returned in respect of every other offence mentioned in paragraph (a) above.

## **96 Amendment of indictment.**

- (1) No trial shall fail or the ends of justice be allowed to be defeated by reason of any discrepancy or variance between the indictment and the evidence.
- (2) 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 indictment 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 indictment and the evidence.
- (3) 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.
- (4) An amendment made under this section shall be sufficiently authenticated by the initials of the clerk of the court.

## **97 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 indictment; and
  - (b) on any other offence of which he could be convicted under the indictment.
- (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

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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 indictment.

- (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.
- (4) A submission under subsection (1) above shall be heard by the judge in the absence of the jury.

VALID FROM 28/03/2011

### **[<sup>F172</sup>97A Submissions as to sufficiency of evidence**

- (1) Immediately after one or other (but not both) of the appropriate events, the accused may make either or both of the submissions mentioned in subsection (2) in relation to an offence labelled in an indictment (the “indicted offence”).
- (2) The submissions are—
  - (a) that the evidence is insufficient in law to justify the accused's being convicted of the indicted offence or any other offence of which the accused could be convicted under the indictment (a “related offence”),
  - (b) that there is no evidence to support some part of the circumstances set out in the indictment.
- (3) For the purposes of subsection (1), “the appropriate events” are—
  - (a) the close of the whole of the evidence,
  - (b) the conclusion of the prosecutor's address to the jury on the evidence.
- (4) A submission made under this section must be heard by the judge in the absence of the jury.

#### **Textual Amendments**

**F172** Ss. 97A-97D inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 73, 206(1)

VALID FROM 28/03/2011

### **97B Acquittals etc. on section 97A(2)(a) submissions**

- (1) This section applies where the accused makes a submission of the kind mentioned in section 97A(2)(a).
- (2) If the judge is satisfied that the evidence is insufficient in law to justify the accused's being convicted of the indicted offence, then—
  - (a) where the judge is satisfied that the evidence is also insufficient in law to justify the accused's being convicted of a related offence—
    - (i) the judge must acquit the accused of the indicted offence, and

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- (ii) the trial is to proceed only in respect of any other offence libelled in the indictment,
  - (b) where the judge is satisfied that the evidence is sufficient in law to justify the accused's being convicted of a related offence, the judge must direct that the indictment be amended accordingly.
- (3) If the judge is not satisfied as is mentioned in subsection (2)—
  - (a) the judge must reject the submission, and
  - (b) the trial is to proceed as if the submission had not been made.
- (4) The judge may make a decision under this section only after hearing both (or all) parties.
- (5) An amendment made by virtue of this section must be sufficiently authenticated by the initials of the judge or the clerk of court.
- (6) In this section, “indicted offence” and “related offence” have the same meanings as in section 97A.

#### Textual Amendments

**F172** Ss. 97A-97D inserted (prosp.) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 73, 206(1)

VALID FROM 28/03/2011

#### 97C Directions etc. on section 97A(2)(b) submissions

- (1) This section applies where the accused makes a submission of the kind mentioned in section 97A(2)(b).
- (2) If the judge is satisfied that there is no evidence to support some part of the circumstances set out in the indictment, the judge must direct that the indictment be amended accordingly.
- (3) If the judge is not satisfied as is mentioned in subsection (2)—
  - (a) the judge must reject the submission, and
  - (b) the trial is to proceed as if the submission had not been made.
- (4) The judge may make a decision under this section only after hearing both (or all) parties.
- (5) An amendment made by virtue of this section must be sufficiently authenticated by the initials of the judge or the clerk of court.

#### Textual Amendments

**F172** Ss. 97A-97D inserted (prosp.) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 73, 206(1)

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VALID FROM 28/03/2011

### 97D No acquittal on “no reasonable jury” grounds

- (1) A judge has no power to direct the jury to return a not guilty verdict on any charge on the ground that no reasonable jury, properly directed on the evidence, could convict on the charge.
- (2) Accordingly, no submission based on that ground or any ground of like effect is to be allowed.]

#### Textual Amendments

**F172** Ss. 97A-97D inserted (prosp.) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 73, 206(1)

### 98 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.

### 99 Seclusion of jury to consider verdict.

- (1) When the jury retire to consider their verdict, the clerk of court shall enclose the jury in a room by themselves and, except in so far as provided for, or is made necessary, by an instruction under subsection (4) below, neither he nor any other person shall be present with the jury [<sup>F173</sup>while] they are enclosed.
- (2) Except in so far as is provided for, or is made necessary, by an instruction under subsection (4) below, [<sup>F174</sup>while the jury are enclosed and until they] intimate that they are ready to return their verdict—
  - (a) subject to subsection (3) below, no person shall visit the jury or communicate with them; and
  - (b) no juror shall come out of the jury room other than to receive or seek a direction from the judge or to make a request—
    - (i) for an instruction under subsection (4)(a), (c) or (d) below; or
    - (ii) regarding any matter in the cause.
- (3) Nothing in paragraph (a) of subsection (2) above shall prohibit the judge, or any person authorised by him for the purpose, communicating with the jury for the purposes—
  - (a) of giving a direction, whether or not sought under paragraph (b) of that subsection; or
  - (b) responding to a request made under that paragraph.
- (4) The judge may give such instructions as he considers appropriate as regards—
  - (a) the provision of meals and refreshments for the jury;
  - (b) the making of arrangements for overnight accommodation for the jury and [<sup>F175</sup>, unless under subsection (7) below the court permits them to separate,] for their continued seclusion if such accommodation is provided;

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- (c) the communication of a personal or business message, unconnected with any matter in the cause, from a juror to another person (or vice versa); or
  - (d) the provision of medical treatment, or other assistance, immediately required by a juror.
- (5) If the prosecutor or any other person contravenes the provisions of this section, the accused shall be acquitted of the crime with which he is charged.
- (6) During the period in which the jury are retired to consider their verdict, the judge may sit in any other proceedings; and the trial shall not fail by reason only of his so doing.
- [<sup>F176</sup>(7) The court may, if it thinks fit, permit the jury to separate even after they have retired to consider their verdict.]

#### Textual Amendments

- F173** Word in s. 99(1) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 79(a), 89; S.S.I. 2003/288, art. 2, Sch.
- F174** Words in s. 99(2) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 79(b), 89; S.S.I. 2003/288, art. 2, Sch.
- F175** Words in s. 99(4)(b) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 79(c), 89; S.S.I. 2003/288, art. 2, Sch.
- F176** S. 99(7) added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 79(d), 89; S.S.I. 2003/288, art. 2, Sch.

### *Verdict and conviction*

#### **100 Verdict of jury.**

- (1) The verdict of the jury, whether the jury are unanimous or not, shall be returned orally by the foreman of the jury unless the court directs a written verdict to be returned.
- (2) Where the jury are not unanimous in their verdict, the foreman shall announce that fact so that the relative entry may be made in the record.
- (3) The verdict of the jury may be given orally through the foreman of the jury after consultation in the jury box without the necessity for the jury to retire.

#### **101 Previous convictions: solemn proceedings.**

- (1) Previous convictions against the accused shall not [<sup>F177</sup>, subject to subsection (2) below and section 275A(2) of this Act,] be laid before the jury, nor shall reference be made to them in presence of the jury before the verdict is returned.
- (2) Nothing in subsection (1) above shall prevent the prosecutor—
  - (a) asking the accused questions tending to show that he has been convicted of an offence other than that with which he is charged, where he is entitled to do so under section 266 of this Act; or
  - (b) leading evidence of previous convictions where it is competent to do so under section 270 of this Act,



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and nothing in this section or in section 69 of this Act shall prevent evidence of previous convictions being led in any case where such evidence is competent in support of a substantive charge.

(3) Previous convictions shall not [<sup>F178</sup>, subject to section 275A(1) of this Act,] be laid before the presiding judge until the prosecutor moves

[<sup>F179</sup>(a)] for sentence [<sup>F180</sup>; or]

[<sup>F181</sup>(b)] for a risk assessment order (or the court at its own instance proposes to make such an order)],

and in that event the prosecutor shall lay before the judge a copy of the notice referred to in subsection (2) or (4) of section 69 of this Act.

[<sup>F182</sup>(3A)] Where, under paragraph (b) of subsection (3) above, the prosecutor lays previous convictions before the judge, he shall also provide the judge with such details regarding the offences in question as are available to him.]

(4) On the conviction of the accused it shall be competent for the court, subject to subsection (5) below, to amend a notice of previous convictions so laid by deletion or alteration for the purpose of curing any error or defect.

[<sup>F183</sup>(5)] . . . . .

(6) Any conviction which is admitted in evidence by the court shall be entered in the record of the trial.

(7) Where a person is convicted of an offence, the court may have regard to any previous conviction in respect of that person in deciding on the disposal of the case.

(8) Where any such intimation as is mentioned in section 69 of this Act is given by the accused, it shall be competent to prove any previous conviction included in a notice under that section in the manner specified in section 285 [<sup>F184</sup>, or as the case may be 286A,] of this Act, and the provisions of the [<sup>F185</sup>section in question] shall apply accordingly.

#### Textual Amendments

**F177** Words in s. 101(1) inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), s. 10(1)(a); S.S.I. 2002/443, art. 3 (with art. 4(5))

**F178** Words in s. 101(3) inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), s. 10(1)(b); S.S.I. 2002/443, art. 3 (with art. 4(5))

**F179** Words in s. 101(3) renumbered as s. 101(3)(a) (19.6.2006) by virtue of Criminal Justice (Scotland) Act 2003 (asp 7), ss. 1(2), 89, Sch. 1 para. 2(3)(a); S.S.I. 2006/332, art. 2(1)(2)

**F180** Word in s. 101(3) inserted (19.6.2006) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 1(2), 89, Sch. 1 para. 2(3)(a); S.S.I. 2006/332, art. 2(1)(2)

**F181** S. 101(3)(b) inserted (19.6.2006) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 1(2), 89, Sch. 1 para. 2(3)(a); S.S.I. 2006/332, art. 2(1)(2)

**F182** S. 101(3A) inserted (19.6.2006) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 1(2), 89, Sch. 1 para. 2(3)(b); S.S.I. 2006/332, art. 2(1)(2)

**F183** S. 101(5) repealed (1.8.1997) by 1997 c. 48, ss. 31, 62(2), Sch. 3; S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)

**F184** Words in s. 101(8) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 57(2)(a), 89; S.S.I. 2003/288, art. 2, Sch.

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**F185** Words in s. 101(8) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 57(2)(b), 89; S.S.I. 2003/288, art. 2, Sch.

VALID FROM 28/03/2011

**[<sup>F186</sup>101A] Post-offence convictions etc.**

- (1) This section applies where an accused person is convicted of an offence (“offence O”) on indictment.
- (2) The court may, in deciding on the disposal of the case, have regard to—
  - (a) any conviction in respect of the accused which occurred on or after the date of offence O but before the date of conviction in respect of that offence,
  - (b) any of the alternative disposals in respect of the accused that are mentioned in subsection (3).
- (3) Those alternative disposals are—
  - (a) a—
    - (i) fixed penalty under section 302(1) of this Act, or
    - (ii) compensation offer under section 302A(1) of this Act, that has been accepted (or deemed to have been accepted) on or after the date of offence O but before the date of conviction in respect of that offence,
  - (b) a work order under section 303ZA(6) of this Act that has been completed on or after the date of offence O but before the date of conviction in respect of that offence.
- (4) The court may have regard to any such conviction or alternative disposal only if it is—
  - (a) specified in a notice laid before the court by the prosecutor, and
  - (b) admitted by the accused or proved by the prosecutor (on evidence adduced then or at another diet).
- (5) A reference in this section to a conviction which occurred on or after the date of offence O is a reference to such a conviction by a court in any part of the United Kingdom or in any other member State of the European Union.]

**Textual Amendments**

**F186** S. 101A inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 70(1), 206(1)

**102 Interruption of trial for other proceedings.**

- (1) When the jury have retired to consider their verdict, and the diet in another criminal cause has been called, then, subject to subsection (3) below, if it appears to the judge presiding at the trial to be appropriate, he may interrupt the proceedings in such other cause—
  - (a) in order to receive the verdict of the jury in the preceding trial, and thereafter to dispose of the case;

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- (b) to give a direction to the jury in the preceding trial upon any matter upon which the jury may wish a direction from the judge or to hear any request from the jury regarding any matter in the cause.
- (2) Where in any case the diet of which has not been called, the accused intimates to the clerk of court that he is prepared to tender a plea of guilty as libelled or such qualified plea as the Crown is prepared to accept, or where a case is remitted to the High Court for sentence, then, subject to subsection (3) below, any trial then proceeding may be interrupted for the purpose of receiving such plea or dealing with the remitted case and pronouncing sentence or otherwise disposing of any such case.
- (3) In no case shall any proceedings in the preceding trial take place in the presence of the jury in the interrupted trial, but in every case that jury shall be directed to retire by the presiding judge.
- (4) On the interrupted trial being resumed the diet shall be called *de novo*.
- (5) In any case an interruption under this section shall not be deemed an irregularity, nor entitle the accused to take any objection to the proceedings.

VALID FROM 10/12/2007

### *<sup>F187</sup>Failure of accused to appear*

#### Textual Amendments

**F187** S. 102A inserted (10.12.2007) by *Criminal Proceedings etc. (Reform) (Scotland) Act 2007* (asp 6), ss. 32, 84; S.S.I. 2007/479, art. 3(1), Sch. (as amended by S.S. I. 2007/527)

#### **102A Failure of accused to appear**

- (1) In proceedings on indictment, an accused person who without reasonable excuse fails to appear at a diet of which the accused has been given due notice (apart from a diet which the accused is not required to attend) is—
- (a) guilty of an offence; and
  - (b) liable on conviction on indictment to a fine or to imprisonment for a period not exceeding 5 years or to both.
- (2) In proceedings on indictment, where an accused person fails to appear at a diet of which the accused has been given due notice (apart from a diet which the accused is not required to attend), the court may grant a warrant to apprehend the accused.
- (3) It is not, otherwise than under subsection (2) above, competent in any proceedings on indictment for a court to grant a warrant for the apprehension of an accused person for failure to appear at a diet.
- (4) However, it remains competent for a court to grant a warrant on petition (as referred to in section 34 of this Act) in respect of an offence under—
- (a) subsection (1) above;
  - (b) section 27(1)(a) of this Act,

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whether or not a warrant has been granted under subsection (2) above in respect of the same failure to appear to which that offence relates.

- (5) Where a warrant to apprehend an accused person is granted under subsection (2) above, the indictment falls as respects that accused.
- (6) Subsection (5) above is subject to any order to different effect made by the court when granting the warrant.
- (7) An order under subsection (6) above—
  - (a) for the purpose of proceeding with the trial in the absence of the accused under section 92(2A) (where the warrant is granted at a trial diet), may be made on the motion of the prosecutor;
  - (b) for any other purpose, may be made on the motion of the prosecutor or of the court's own accord.
- (8) A warrant granted under subsection (2) above shall be in such form as may be prescribed by Act of Adjournal or as nearly as may be in such form.
- (9) A warrant granted under subsection (2) above (in the form mentioned in subsection (8) above) shall imply warrant to officers of law—
  - (a) to search for and apprehend the accused;
  - (b) to bring the accused before the court;
  - (c) in the meantime, to detain the accused in a police station, police cell or other convenient place; and
  - (d) so far as is necessary for the execution of the warrant, to break open shut and lockfast places.
- (10) An accused apprehended under a warrant granted under subsection (2) above shall wherever practicable be brought before the court not later than in the course of the first day on which the court is sitting after the accused is taken into custody.
- (11) Where the accused is brought before the court in pursuance of a warrant granted under subsection (2) above, the court shall make an order—
  - (a) detaining the accused until liberated in due course of law; or
  - (b) releasing the accused on bail.
- (12) For the purposes of subsection (11) above, the court is to have regard to the terms of the indictment in relation to which the warrant was granted even if that indictment has fallen.
- (13) In a case where a warrant is granted under subsection (2) above, any period of time during which the accused was detained in custody—
  - (a) as regards that case; and
  - (b) prior to the making of an order under subsection (11) above,
 does not count towards any time limit applying in that case by virtue of section 65(4) of this Act.
- (14) For the purposes of subsection (13) above—
  - (a) detention as regards a case includes, in addition to detention as regards the indictment in relation to which the warrant was granted (whether or not that indictment has fallen), detention as regards any preceding petition;
  - (b) it is immaterial whether or not further proceedings are on a fresh indictment.

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- (15) At any time before the trial of an accused person on indictment, it is competent—
- (a) to amend the indictment so as to include an additional charge of an offence under subsection (1) above;
  - (b) to include, in the list of witnesses or productions associated with the indictment, witnesses or productions relating to that offence.
- (16) In this section, “the court” means—
- (a) where the accused failed to appear at the High Court—
    - (i) for the purposes of subsections (10) to (12) above, that Court (whether or not constituted by a single judge);
    - (ii) otherwise, a single judge of that Court;
  - (b) where the accused failed to appear at a sheriff court, any sheriff court with jurisdiction in relation to the proceedings.]

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