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 deputes.

(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.

Status: *Point in time view as at 10/03/2008. This version of this cross heading contains provisions that are not valid for this point in time.*
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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

[[F1](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.**]**

[[F2](1A) If the preliminary hearing (where subsection (1)(a) above applies) or the trial is not so commenced,**]** the accused

[[F3](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) **[**[F4]or (1A)**]** above shall bar the trial of an accused for whose **[**[F5]apprehension**]** a warrant has been granted for failure to appear at a diet in the case.

(3) On an application made for the purpose,

[[F6](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 **[**[F7]either or both of the periods of 11 and**]** 12 months specified in that subsection.**]**

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[[F8](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 **[**[F9]entitled to be admitted to bail**]** ; or

[[F10](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) **[**[F11]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 **[**[F12]entitled to be admitted to bail**]**.

[[F13](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.**]**

[[F14](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) [F15]. . . . . .

(7) [F15]. . . . . .

(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.

[[F16](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,

[[F17](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 **[**[F18]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 [M1]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 Word in s. 65(2) substituted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 80, 84, **Sch. para. 12(1)**; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

F6 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)

F7 Words in s. 65(3)(b) substituted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 26**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

F8 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)

F9 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)

F10 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)

F11 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)

F12 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)

F13 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)

F14 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)

F15 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)

F16 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)

F17 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)

F18 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)

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Marginal Citations
M1 1961 c.39.

66 Service and lodging of indictment, etc.

[[F19](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.

[[F20](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**[**[F21] and of the list of productions (if any) to be put in evidence by the prosecution**]**; or

(b) **[**[F22]if the accused, at the time of citation, is not in custody,**]** by a constable affixing to the door of the **[**[F23]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 **[**[F24]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.

[[F25](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.

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(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).**]**

[[F26](4C) Where—

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

(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) **[**[F27]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

[[F28](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 **[**[F29]; and

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

[[F30](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").**]**

[[F31](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 [F32](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 **[**[F33](including at any commissioner proceedings)**][**[F34]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 **[**[F35]the conduct of his case at or for the purposes of the preliminary hearing or**]** his defence at the trial **[**[F36](or at any related commissioner proceedings)**]**, the court will do so; [F37]. . .

(b) [F37]. . . . . .

[A notice affixed under subsection (4)(b) above or served under subsection (6) above [F38](6AA) 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

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(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.**]**

(6B) A failure to comply with subsection **[**[F39](4C), (6A) or (6AA)**]** above does not affect the validity or lawfulness of any **[**[F40]notice affixed under subsection (4)(b) above or served under subsection (6) above**]** or any other element of the proceedings against the accused.**]**

[[F41](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) **[**[F42]Subject 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) [F43]. . . . . .

(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) [F44]. . . . . .

(11) No objection to the competency of the officer who served the indictment **[**[F45], or who executed a citation under subsection (4)(b) above,**]** to give evidence in respect of such service **[**[F46]or 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 [F47]. . . served on an accused shall be sufficiently authenticated by the initials of any procurator fiscal or of the person serving the same.

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(14) Any deletion or correction made on any execution of citation or notice **[**[F48]or**]** other document **[**[F49]so**]** served shall be sufficiently authenticated by the initials of the person serving the same.

[[F50](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

F19 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)

F20 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.

F21 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)

F22 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)

F23 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)

F24 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)

F25 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)

F26 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)

F27 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.

F28 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)

F29 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)

F30 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)

F31 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**

F32 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)

F33 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)**

F34 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.

F35 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)

F36 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)**

F37 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)

F38 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)

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F39 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)

F40 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)

F41 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)

F42 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.

F43 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)

F44 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)

F45 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.

F46 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.

F47 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.

F48 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.

F49 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.

F50 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 **[**[F51]seven**]** clear days before the **[**[F52]preliminary hearing**]**; and, except on cause shown, no such objection shall be admitted [F53]. . . 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.

[[F54](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

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(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

(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 **[**[F55]by the relevant time.**]**

[[F56](5A) In subsection (5) above, "the relevant time" means—

(a) where the case is to be tried in the High Court—

(i) not less then 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

F51 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)

F52 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)

F53 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)

F54 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)

F55 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)

F56 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.

F57 . . . . . .

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Textual Amendments

F57 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 **[**[F58], where the case is to be tried in the sheriff court,**]** at least eight days before the trial diet **[**[F59]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, **[**[F60]where the case is to be tried in the sheriff court,**]** at least four days before the trial diet **[**[F61]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 **[**[F62]the case is to be tried in the High Court**]** , to the Crown Agent; and

(b) where **[**[F63]the case is to be tried in the sheriff court**]** , to the procurator fiscal.

Textual Amendments

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)(i)**; 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)(ii)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

F60 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)

F61 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)

F62 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)

F63 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 **[**[F64]indicted to the High Court, to the Crown Agent not less than seven clear days before the preliminary hearing;**]**

[[F64](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.**]**

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(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.

[[F65](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 **[**[F66], 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.

[[F67](6) This section applies in relation to the alternative disposals mentioned in subsection (7) below as it applies in relation to previous convictions.

(7) Those alternative disposals are—

(a) a—

(i) fixed penalty under section 302(1) of this Act;

(ii) compensation offer under section 302A(1) of this Act,

that has been accepted (or deemed to have been accepted) by the accused in the two years preceding the date of an offence charged;

(b) a work order under section 303ZA(6) of this Act that has been completed in the two years preceding the date of an offence charged.**]**

Textual Amendments

F64 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)

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F65 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)**

F66 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)**

F67 S. 69(6)(7) added (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 53(1)**, 84; S.S.I. 2008/42, **art. 3**, Sch.

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 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 **[**[F68]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 **[**[F69] 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.

[[F70](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.

[[F71](8) In subsection (4) above, "representative" means—

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(a) in the case of a body corporate (other than a limited liability partnership), the managing director, secretary or other person in charge, or locally in charge, of its affairs;

(b) in the case of a limited liability partnership, a member of the partnership;

(c) in either case, an employee of the body duly appointed by it for the purpose of the proceedings.

(9) For the purposes of subsection (8)(c) above, a statement—

(a) in the case of a body corporate (other than a limited liability partnership), purporting to be signed by an officer of the body;

(b) in the case of a limited liability partnership, purporting to be signed by a member of the partnership,

to the effect that the person named in the statement has been appointed as the representative for the purposes of any proceedings to which this section applies is sufficient evidence of such appointment.**]**

Textual Amendments

F68 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))

F69 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)

F70 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)

F71 S. 70(8)(9) substituted (10.3.2008) for s. 70(8) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 28**, 84; S.S.I. 2008/42, **art. 3**, Sch.

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.**
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, 6.4.2008, 1.10.2008 for certain purposes and 1.10.2009 otherwise) 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 Sch. 1 (which was revoked (1.10.2009) by S.I. 2008/2860, art. 6 subject to savings in Sch. 2)); S.I. 2007/1093, **art. 2(2)(c)** (subject to Sch. 1(which was revoked (1.10.2009) by S.I. 2008/2860, art. 6 subject to savings in Sch. 2)); S.I. 2007/2194, **art. 2(1)(l)(3)**

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(h)(subject to art. 12, 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, arts. {3(3)(g)},{5(3)(a)}(subject to arts. 7, 12, 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. 2008/2860, **art. 3(s)** (with arts. 5, 7, 8, Sch. 2 (as amended by S.I. 2009/1802, art. 18 and S.I. 2009/2476, reg. 2)).

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**)

C10 S. 70 applied (27.11.2008) by Counter-Terrorism Act 2008 (c. 28), ss. 62, 91, 100, **Sch. 7 para. 37(2)(b)** (with s. 101(2) and Sch. 7 para. 43)

C11 S. 70 applied (9.3.2009) by The Ozone-Depleting Substances (Qualifications) Regulations 2009 (S.I. 2009/ 216), {reg. 10(4)}
S. 70 applied (9.3.2009) by The Ozone-Depleting Substances (Qualifications) Regulations 2009 (S.I. 2009/ 216), {reg. 10(6)(ii)}

C12 S. 70 applied (9.3.2009) by The Fluorinated Greenhouse Gases Regulations 2009 (S.I. 2009/261), regs. 1(1)(b)(4), **52(4)**
S. 70 applied (9.3.2009) by The Fluorinated Greenhouse Gases Regulations 2009 (S.I. 2009/261), regs. 1(1)(b)(4), **52(6)(b)(ii)**

C13 S. 70 applied (27.4.2009) by The Organic Products Regulations 2009 (S.I. 2009/842), **reg. 28(4)(b)**

C14 S. 70 applied (1.1.2010) by The Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009 (S.I. 2009/3263), **reg. 12(2)(b)(ii)**

C15 S. 70 applied (prosp.) by Pensions Act 2008 (c. 30), **ss. 47(2)(b)(ii)**, 149

C16 S. 70 applied (1.5.2009 for certain purposes, otherwise 1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), {regs. 1(2)(b)(xiii)(c), 118(4)(b)}

C17 S. 70 applied (8.3.2010) by The Mercury Export and Data (Enforcement) Regulations 2010 (S.I. 2010/265), **reg. 7(7)(b)(ii)**

C18 S. 70 applied (6.4.2010) by The Detergents Regulations 2010 (S.I. 2010/740), **reg. 24(2)(b)(ii)**

C19 S. 70 applied (17.12.2010) by Terrorist Asset-Freezing etc. Act 2010 (c. 38), **ss. 38(5)(b)(6)**, 55(1) (with s. 44)

VALID FROM 06/06/2011

[F72 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—

(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.

Status: *Point in time view as at 10/03/2008. This version of this cross heading contains provisions that are not valid for this point in time.*
Changes to legislation: *Criminal Procedure (Scotland) Act 1995, Cross Heading: The indictment is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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

F72 S. 70A inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 124(3)**, 206(1) (with s. 124(1))

Status:
Point in time view as at 10/03/2008. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation:
Criminal Procedure (Scotland) Act 1995, Cross Heading: The indictment is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.