



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART VII

SOLEMN PROCEEDINGS

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 [^{F1}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—
 - (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 ^{F2} . . . a solicitor to represent his interests during such absence.

[^{F3}(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,

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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.
- [^{F4}(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;
 - (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

- F1** 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)
- F2** 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)
- F3** 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)))

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F4 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—
 - (a) sign the shorthand notes taken by him of such proceedings and certify them as being complete and correct; and
 - (b) retain the notes.
- (3) A person recording such proceedings by mechanical means shall—
 - (a) certify that the record is true and complete;
 - (b) specify in the certificate the proceedings or, as the case may be, the part of the proceedings to which the record relates; and
 - (c) 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—
 - (a) discussions—
 - (i) on any objection to the relevancy of the indictment;
 - (ii) with respect to any challenge of jurors; and
 - (iii) on all questions arising in the course of the trial;
 - (b) the decision of the court on any matter referred to in paragraph (a) above;
 - (c) the evidence led at the trial;
 - (d) any statement made by or on behalf of the accused whether before or after the verdict;
 - (e) the judge’s charge to the jury;
 - (f) the speeches of counsel or agent;
 - (g) the verdict of the jury;
 - (h) the sentence by the judge.

Modifications etc. (not altering text)

C1 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—

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- (a) the Secretary of State [^{F5}or, subject to subsection (2B) below, the prosecutor] ; or
 - (b) any other person [^{F6}, 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.

[^{F7}(2A) If—

- (a) on the written application of a person convicted at the trial and granted leave to appeal; and
 - [^{F8}(b) either of the conditions in subsection (2AZA) is met or it is otherwise in the interests of justice to do so,]
- a judge of the High Court [^{F9}may order, and in that event] 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.

[The conditions mentioned in subsection (2A)(b) are that—

- ^{F10}(2AZA) (a) a ground of appeal, for which leave to appeal has been granted, reveals a significant dispute between that ground and the report of the trial judge on the nature and extent of the evidence, speech or other part of the record to which the application relates; or
- (b) the trial judge’s report does not, in relation to a ground of appeal for which leave to appeal has been granted, provide a sufficient narrative of the nature and extent of the evidence, speech or other part of the record to which the application relates.]

[Subsection (2A) applies to a person mentioned in subsection (2AB) as it applies to a
^{F11}(2AA) person convicted at the trial, with the modification that the reference to the transcript in subsection (2A) is to be construed as a reference to the transcript of the record made of proceedings at the trial resulting in the acquittal mentioned in subsection (2AB)(b).

(2AB) The person mentioned in subsection (2AA) is a person who—

- (a) is convicted of the offence mentioned in subsection (1) of section 11 of the Double Jeopardy (Scotland) Act 2011 (asp 16));
- (b) is subsequently acquitted of an offence mentioned in subsection (2) of that section; and
- (c) desires to appeal, under subsection (7) of that section, against the conviction of the offence mentioned in paragraph (a).]

(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
- [set out, for each ground of appeal to which the application relates, the
^{F12}(aa) particular evidence, speech or other part of the record required; and]
- (b) be intimated forthwith by the applicant to the prosecutor.

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- (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 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

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- (d) any person authorised to act on behalf of any of the persons mentioned in paragraphs (a) to (c) above.

Textual Amendments

- F5** 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.
- F6** 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.
- F7** 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.
- F8** S. 94(2A)(b) substituted (12.11.2012) by Act of Adjournal (Amendment of the Criminal Procedure (Scotland) Act 1995) (Transcripts) 2012 (S.S.I. 2012/272), paras. 1(2), **2(2)(a)** (with para. 3)
- F9** Words in s. 94(2A) substituted (12.11.2012) by Act of Adjournal (Amendment of the Criminal Procedure (Scotland) Act 1995) (Transcripts) 2012 (S.S.I. 2012/272), paras. 1(2), **2(2)(b)** (with para. 3)
- F10** S. 94(2AZA) inserted (12.11.2012) by Act of Adjournal (Amendment of the Criminal Procedure (Scotland) Act 1995) (Transcripts) 2012 (S.S.I. 2012/272), paras. 1(2), **2(3)** (with para. 3)
- F11** S. 94(2AA)(2AB) inserted (28.11.2011) by Double Jeopardy (Scotland) Act 2011 (asp 16), s. 17(3), **sch. para. 7**; S.S.I. 2011/365, **art. 3**
- F12** S. 94(2C)(aa) inserted (12.11.2012) by Act of Adjournal (Amendment of the Criminal Procedure (Scotland) Act 1995) (Transcripts) 2012 (S.S.I. 2012/272), paras. 1(2), **2(4)** (with para. 3)

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—

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- (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 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.

[^{F13}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 libelled 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.

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- (4) A submission made under this section must be heard by the judge in the absence of the jury.

Textual Amendments

F13 Ss. 97A-97D inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 73, 206(1); S.S.I. 2011/178, art. 2, sch.

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
 - (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

F13 Ss. 97A-97D inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 73, 206(1); S.S.I. 2011/178, art. 2, sch.

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.

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- (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

F13 Ss. 97A-97D inserted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 73, 206(1); S.S.I. 2011/178, art. 2, sch.

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

F13 Ss. 97A-97D inserted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 73, 206(1); S.S.I. 2011/178, art. 2, sch.

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 [^{F14}while] they are enclosed.
- (2) Except in so far as is provided for, or is made necessary, by an instruction under subsection (4) below, [^{F15}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.

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- (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 [^{F16}, unless under subsection (7) below the court permits them to separate,] for their continued seclusion if such accommodation is provided;
 - (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.
- [^{F17}(7) The court may, if it thinks fit, permit the jury to separate even after they have retired to consider their verdict.]

Textual Amendments

- F14** 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.
- F15** 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.
- F16** 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.
- F17** 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.

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