



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XII

#### EVIDENCE

##### *Witnesses*

#### **263 Examination of witnesses.**

- (1) In any trial, it shall be competent for the party against whom a witness is produced and sworn *in causa* to examine such witness both in cross and *in causa*.
- (2) The judge may, on the motion of either party, on cause shown order that the examination of a witness for that party (“the first witness”) shall be interrupted to permit the examination of another witness for that party.
- (3) Where the judge makes an order under subsection (2) above he shall, after the examination of the other witness, permit the recall of the first witness.
- (4) In a trial, a witness may be examined as to whether he has on any specified occasion made a statement on any matter pertinent to the issue at the trial different from the evidence given by him in the trial; and evidence may be led in the trial to prove that the witness made the different statement on the occasion specified.
- (5) In any trial, on the motion of either party, the presiding judge may permit a witness who has been examined to be recalled.

#### **264 Spouse of accused a competent witness.**

- (1) The spouse of an accused may be called as a witness—
  - (a) by the accused;
  - (b) by a co-accused or by the prosecutor without the consent of the accused.
- (2) Nothing in this section shall—

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- (a) make the spouse of an accused a compellable witness for a co-accused or for the prosecutor in a case where such spouse would not be so compellable at common law;
  - (b) compel a spouse to disclose any communication made between the spouses during the marriage.
- (3) The failure of the spouse of an accused to give evidence shall not be commented on by the defence or the prosecutor.
- (4) The spouse of a person charged with bigamy may be called as a witness either for the prosecution or the defence and without the consent of the person charged.

## **265 Witnesses not excluded for conviction, interest, relationship, etc.**

- (1) Every person adduced as a witness who is not otherwise by law disqualified from giving evidence, shall be admissible as a witness, and no objection to the admissibility of a witness shall be competent on the ground of—
- (a) conviction of or punishment for an offence;
  - (b) interest;
  - (c) agency or partial counsel;
  - (d) the absence of due citation to attend; or
  - (e) his having been precognosced subsequently to the date of citation.
- (2) Where any person who is or has been an agent of the accused is adduced and examined as a witness for the accused, it shall not be competent for the accused to object, on the ground of confidentiality, to any question proposed to be put to such witness on matter pertinent to the issue of the guilt of the accused.
- (3) No objection to the admissibility of a witness shall be competent on the ground that he or she is the father, mother, son, daughter, brother or sister, by consanguinity or affinity, or uncle, aunt, nephew or niece, by consanguinity of any party adducing the witness in any trial.
- (4) It shall not be competent for any witness to decline to be examined and give evidence on the ground of any relationship mentioned in subsection (3) above.

## **266 Accused as witness.**

- (1) Subject to subsections (2) to (8) below, the accused shall be a competent witness for the defence at every stage of the case, whether the accused is on trial alone or along with a co-accused.
- (2) The accused shall not be called as a witness in pursuance of this section except upon his own application or in accordance with subsection (9) or (10) below.
- (3) An accused who gives evidence on his own behalf in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged.
- (4) An accused who gives evidence on his own behalf in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless—

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- (a) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged; or
  - (b) the accused or his counsel or solicitor has asked questions of the witnesses for the prosecution with a view to establishing the accused's good character or impugning the character of the complainer, or the accused has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of the witnesses for the prosecution or of the complainer; or
  - (c) the accused has given evidence against any other person charged in the same proceedings.
- (5) In a case to which paragraph (b) of subsection (4) above applies, the prosecutor shall be entitled to ask the accused a question of a kind specified in that subsection only if the court, on the application of the prosecutor, permits him to do so.
- [<sup>F1</sup>(5A) Nothing in subsections (4) and (5) above shall prevent the accused from being asked, or from being required to answer, any question tending to show that he has been convicted of an offence other than that with which he is charged if his conviction for that other offence has been disclosed to the jury, or is to be taken into consideration by the judge, under section 275A(2) of this Act.]
- (6) An application under subsection (5) above in proceedings on indictment shall be made in the course of the trial but in the absence of the jury.
- (7) In subsection (4) above, references to the complainer include references to a victim who is deceased.
- (8) Every person called as a witness in pursuance of this section shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence.
- (9) The accused may—
- (a) with the consent of a co-accused, call that other accused as a witness on the accused's behalf; or
  - (b) ask a co-accused any question in cross-examination if that co-accused gives evidence,
- but he may not do both in relation to the same co-accused.
- (10) The prosecutor or the accused may call as a witness a co-accused who has pleaded guilty to or been acquitted of all charges against him which remain before the court (whether or not, in a case where the co-accused has pleaded guilty to any charge, he has been sentenced) or in respect of whom the diet has been deserted; and the party calling such co-accused as a witness shall not require to give notice thereof, but the court may grant any other party such adjournment or postponement of the trial as may seem just.
- (11) Where, in any trial, the accused is to be called as a witness he shall be so called as the first witness for the defence unless the court, on cause shown, otherwise directs.

#### Textual Amendments

- F1** S. 266(5A) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002](#) (asp 9), s. 10(3); S.S.I. 2002/443, art. 3 (with art. 4(5))

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## 267 Witnesses in court during trial.

- (1) The court may, on an application by any party to the proceedings, permit a witness to be in court during the proceedings or any part of the proceedings before he has given evidence if it appears to the court that the presence of the witness would not be contrary to the interests of justice.
- (2) Without prejudice to subsection (1) above, where a witness has, without the permission of the court and without the consent of the parties to the proceedings, been present in court during the proceedings, the court may, in its discretion, admit the witness, where it appears to the court that the presence of the witness was not the result of culpable negligence or criminal intent, and that the witness has not been unduly instructed or influenced by what took place during his presence, or that injustice will not be done by his examination.

### [<sup>F2</sup>267A Citation of witnesses for precognition

- (1) This Act shall be sufficient warrant for the citation of witnesses for precognition by the prosecutor, whether or not any person has been charged with the offence in relation to which the precognition is taken.
- (2) Such citation shall be in the form prescribed by Act of Adjournal or as nearly as may be in such form.
- (3) A witness who, having been duly cited—
  - (a) fails without reasonable excuse, after receiving at least 48 hours notice, to attend for precognition by a prosecutor at the time and place mentioned in the citation served on him; or
  - (b) refuses when so cited to give information within his knowledge regarding any matter relative to the commission of the offence in relation to which the precognition is taken,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to a term of imprisonment not exceeding 21 days.]

#### Textual Amendments

- F2** S. 267A inserted (4.10.2004) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 22, 27(1)**; [S.S.I. 2004/405](#), **art. 2**, **Sch. 1** (subject to savings in [arts. 3-5](#))

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**Changes to legislation:**

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