



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART IX

#### SUMMARY PROCEEDINGS

##### *Pre-trial procedure*

#### [<sup>F1</sup>149B Notice of defences

- (1) It is not competent for an accused in a summary prosecution to found on a defence to which this subsection applies unless—
- (a) notice of the defence has been given to the prosecutor in accordance with subsection (5) below; or
  - (b) the court, on cause shown, allows the accused to found on the defence despite the failure so to give notice of it.
- (2) Subsection (1) above applies—
- (a) to a special defence;
  - (b) to a defence which may be made out by leading evidence calculated to exculpate the accused by incriminating a co-accused;
  - (c) to a defence of automatism or coercion;
  - (d) in a prosecution for an offence to which section 288C of this Act applies, to a defence of consent.

[ Subsection (1) does not apply where—

- <sup>F2</sup>(2A) (a) the accused lodges a defence statement under section 125 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13),
- (b) the statement is lodged—
- (i) where an intermediate diet is to be held, at or before the diet, or
  - (ii) where such a diet is not to be held, no later than 10 clear days before the trial diet, and

*Status: Point in time view as at 16/08/2013.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Section 149B is up to date with all changes known to be in force on or before 08 April 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)*

- (c) the accused's defence consists of or includes a defence to which that subsection applies.]
- (3) In subsection (2)(d) 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.
- (4) In subsection (3) above, “complainer” has the same meaning as in section 274 of this Act.
- (5) Notice of a defence is given in accordance with this subsection if it is given—
- (a) where an intermediate diet is to be held, at or before that diet; or
  - (b) where such a diet is not to be held, no later than 10 clear days before the trial diet,
- together with the particulars mentioned in subsection (6) below.
- (6) The particulars are—
- (a) in relation to a defence of alibi, particulars as to time and place; and
  - (b) in relation to that or any other defence, particulars of the witnesses who may be called to give evidence in support of the defence.
- (7) Where notice of a defence to which subsection (1) above applies is given to the prosecutor, the prosecutor is entitled to an adjournment of the case.
- (8) The entitlement to an adjournment under subsection (7) above may be exercised whether or not—
- (a) the notice was given in accordance with subsection (5) above;
  - (b) the entitlement could have been exercised at an earlier diet.]

#### Textual Amendments

- F1** S. 149B substituted (10.12.2007) for ss. 149, 149A by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), ss. 19, 84; S.S.I. 2007/479, art. 3(1), Sch. (subject to art. 7) (as amended by S.S.I. 2007/527)
- F2** S. 149B(2A) inserted (6.6.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 125(7), 206(1) (with s. 125(1)); S.S.I. 2011/178, art. 2, sch.

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